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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 460.

EARL P. GREENWOOD, PETITIONER

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MARCH 11, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

SUPREME COURT OF THE UNITED STATES

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EARL P. GREENWOOD, PETITIONER

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(Caption omitted.)

In United States District Court for the Western District of Missouri, Western Division

No. 18423

(Section 2114, Title 18, U. S. C.).

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

EARL P. GREENWOOD, DEFENDANT

[File endorsement omitted.]

Indictment

Filed Nov. 26, 1952

Count I

The Grand Jury charges:

That on or about the 22nd day of October, 1952, at Kansas City, Jackson County, Missouri, in the Western Division of the Western District of Missouri, Earl P. Greenwood did unlawfully, knowingly and feloniously assault Callie Murphy, who was then and there a clerk employed in the United States Post Office Department at United States Post Office Station No. 12, located at 1522 E. Twelfth Street, Kansas City, Missouri, and having lawful charge, custody and control of the mail matter and other property of the United States, to-wit, United States Money Order forms, with intent to rob, steal and purloin the mail matter and other property of the United States, to-wit, one hundred sixty-eight (168) Money Order forms numbered 10-27,205,533 to 10-27,205,700 inclusive.

Count II

The Grand Jury further charges:

That on or about the 22nd day of October, 1952, at Kansas City, Jackson County, Missouri, in the Western Division of the Western District of Missouri, the defendant Earl P. Greenwood did unlawfully, knowingly and feloniously rob Callie Murphy,

3 who was then and there a clerk employed in the United States Post Office Department in United States Post Office Station No. 12, located at 1522 E. 12th Street, Kansas City, Missouri, and having lawful custody and control of mail matter

and other property of the United States of America, and did unlawfully, knowingly, and feloniously take, steal and carry away from the said Callie Murphy, Clerk at United States Post Office Station No. 12 as aforesaid, certain mail matter and property of the United States; to wit, 168 blank Money Order forms numbered 10-27,205,533 to 10-27,205,700, inclusive, and that in effecting such robbery the said Earl P. Greenwood did put in jeopardy the life of said Callie Murphy by the use of a dangerous weapon, to wit, a P. 38, 6424 Pistol.

A true bill:

I. L. EBBE,
Foreman.

Sam O. Hargus
SAM O. HARGUS
Assistant United States Attorney.

4 In United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Transfer for Plea and Sentence Under Rule 20

Filed November 28, 1954

I, Earl P. Greenwood, knowing that I am charged in the Western District of Missouri, Western Division, with having violated Section 2114, Title 18, United States Code, hereby acknowledge that I have been advised of my constitutional right to a trial by jury in the Western District of Missouri, Western Division; that I have been advised of my right to have counsel appointed for me, without charge if I do not have funds to retain an attorney to represent me at all stages of this proceeding, including the right to have counsel represent me in connection with this statement.

Having been so advised, and having been served with a copy of the indictment against me, I hereby state that I desire to waive trial in the Western District of Missouri, Western Division; that I desire to enter consent and request that insofar as it is possible to do so, the charge now pending against me be disposed of in the Eastern Division of the Northern District of Ohio, as provided in Rule 20 of the Federal Rules of Criminal Procedure.

EARL P. GREENWOOD.

JOS. M. HOVANCSEK,
Witness.

In accordance with the wishes of the above named defendant expressed in the foregoing statement; we consent that all further proceedings in this matter be taken in the Eastern Division of the Northern District of Ohio.

BARRY M. WEAR,
United States Attorney,
Western District of Missouri.

Dated: November 26, 1952.

JOHN J. KOVE, JR.,
United States Attorney,
Northern District of Ohio.

Dated: November 24, 1952.

In United States District Court for the Northern District of Ohio, Eastern Division

Criminal Action No. 20817

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EARL P. GREENWOOD, DEFENDANT

[File endorsement omitted.]

Transcript of Proceedings

February 2, 1953

McNAMEE, *J.:*

Present:

John S. Mudrl, Asst. U. S. Attorney, appearing for the Government.

Henry C. Lavine, Esq., appearing for the Defendant.

The COURT. For the purpose of the record, it may appear that when the Defendant, Earl P. Greenwood, was brought before this Court on a transfer from the District Court for the Western District of Missouri on the charge of armed robbery of a Post Office, Mr. Henry Lavine was appointed counsel for the Defendant.

Sometime thereafter Mr. Lavine suggested to the Court that he thought a psychiatric examination advisable and desirable before any plea was entered. Pursuant to that suggestion
6 and request, the Court asked the District Attorney to have Dr. Royal Grossman make an examination of the Defendant to determine his present mental status.

Dr. Grossman submitted a report which the Court has read, and we will now take testimony on the matter of the defendant's present sanity or insanity.

Mr. Mudri. Will you take the stand, Doctor?

7 Dr. Royal G. Grossman, called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF DR. ROYAL G. GROSSMAN

By Mr. Mudri:

Q. Will you state your name, Doctor?

A. Royal G. Grossman.

Q. And you are connected with the Psychiatric Clinic in the Criminal Courts Building, Cleveland, Ohio?

A. I am the Director, yes, sir.

Q. I was going to ask you whether or not you are not the Director?

A. Yes.

Q. Doctor, on or about the 15th day of December, 1952, you received a letter from us asking you to examine one Earl P. Greenwood who was then in County Jail in Cuyahoga County; is that correct?

A. Yes.

Q. Did you make that examination?

A. Yes, sir.

Q. And that was a psychiatric examination of the Defendant, Earl P. Greenwood?

A. Yes, sir. Psychiatric and physical.

Q. What did your examination disclose as to his mental condition?

8 A. The man showed mannerisms which were suggestive of schizophrenia. He sat with his head down, saliva drooling from his mouth. He was rather slow in answering, and answered in a somewhat mumbling tone.

He was very actively pulling at a small piece of string that he held in his hand. He had his shirt fastened unevenly so that the buttons and the buttonholes didn't match. One leg of his—the right leg of his trousers was torn completely off about halfway up, and then split somewhat further. He mumbled to himself and showed rather jerky movements.

In the course of the interview he removed his shoes. I asked him if his feet bothered him and he said, "no." When asked a question he would usually respond in a fairly understanding way.

He said that he had been a drug user; that he began Morphine about 1942. And that he would take as many as seven or eight half or three quarter grain doses per day.

In 1947 he began using what is called heroin. That is a mixture that is currently available today, taking about 16 capsules a day as maximum. He said that he also has taken what he called "dollies" or dolcinne which he said also were called miracle pills. He said that drugs were sent by Heaven, by God, to help him.

He explained that he had been to a psychiatrist in San Francisco some time before, but he didn't help him so he stopped
9 paying him money. He says that he is sometimes nervous inside all over. Not all the time.

I asked if he slept well. He said, "I don't have nothing to go to sleep with." He said, "My head doesn't ache. It is fever like. I am dizzy all the time, especially if I yawn. Haven't fainted since I left the Army. I occasionally hear a voice. It's like an echo. The other day my mother came to see me and this voice told me to spit through the screen.

"I have got a good mother. The voice tells me I ain't got no confidence in myself. There is sometimes pressing on the back—on my back and the back of my head. You won't laugh at me now, will you? It feels like bread dough. It makes it hard for me to think.

"When I was using dope it didn't bother me so much. I read my Bible every day and hope it will go away. The woman is dead. I don't know how anything could hang so long. It's been since 1940."

Q. Now, doctor, these were all answers to questions that you had propounded to him during your examination?

A. Answers to questions and spontaneous productions of the patient. I have a little more here on the subsequent interview. I was just checking.

Q. This examination was made when?

A. That was December 29th—no. December 29th, and I also saw him on January 29th.

10 Q. Did you make a subsequent examination of Earl P. Greenwood?

A. On January 29th, yes, sir.

Q. And what did that examination disclose?

A. I asked him how he was feeling. He said, "I think I have had the flu upstairs. It hurts here," indicating the sternal region. "I have a cough. This is January." He was looking at the calendar. "It's the 29th. I ain't been sleeping so good. It is the first of the week. It should be Tuesday or Wednesday." It was actually Friday, the 29th of January.

"I couldn't sleep the other night and I tried to figure out the lady and the child and the income tax. I feel something heavy and soft like, like dough or putty on my head and back. I will be trying to read and can't keep my mind on it. This has bothered

me as long as I can remember, but not like it bothers me now.' The last time I heard voices was last week. Soft, like someone whispering.

"I jumped out of bed and didn't hear nothing. I just said to myself, 'Just forget it.' But sometimes you can't forget. You just go away by yourself. I think I will go back to Leavenworth. I will be gone a long time. I have peace of mind when I am away.

"They had a class they called Music Appreciation. They played records, some classics. You have peace of mind. I guess it don't make much difference."

11 That is essentially the part of our conversation that has reference to his mental condition.

Q. Now, Doctor, after having examined him on two separate occasions and being advised at the time we sent you a letter as to what the Government wanted to know, with reference to the examination made, what would your opinion be as to the sanity or insanity of this Defendant, or his capability of being able to confer with his attorney as to what he ought to do in a situation or in a case such as the one with which he is charged at the moment?

A. Well, I think he is now suffering from schizophrenia. He doesn't appear to be quite as sick in January as he was in December. He was apparently without drugs for nearly two months when I first examined him and three months at the last examination.

I believe that he is suffering from schizophrenia, and while he does have some relation to reality and knows some of the things that are going on around him, I don't believe he is fully capable of cooperating with his attorney in his defense at this time.

Mr. MUDRI. I have no further questions at this time, Your Honor.

The COURT. Do you desire to ask any questions?

Mr. LAVINE. No, Your Honor.

12 The COURT. Doctor, I think in addition to what you stated, you also have a report of the psychologist there which shows his IQ to be 61?

The WITNESS. That is his present functional level. IQ 61 on the Belleview Wexler test.

Mr. MUDRI. I would like to ask just one or two more questions. Will you mark this, please?

(Paper writings marked for the purposes of identification as Government's Exhibit No. 1)

Q. Doctor, I hand you what has been marked for identification as Government's Exhibit No. 1 and ask you whether or not that is the psychiatric report that you had prepared and mailed to our office in response to our request dated December 15, 1952?

A. It is, sir.

Q. And that is the examination that was made on December 2nd, is that correct?

A. Yes, sir.

Q. And that substantially is the report, as you have now testified to orally?

A. That is right, sir.

Mr. Murri: I would like to offer this in evidence.

The Court. Doctor, it appears—it may be received.

Doctor, it appears that the Defendant consented to a
13 transfer for plea and sentence under rule 20 sometime in the month of November. And the latter part of that consent which he signed reads: "Having been so advised and having been served a copy of the indictment against me, I hereby state that I desire to go to trial in the Western District of Missouri, Western Division; that I desire to enter consent and request that insofar as it is possible to do so, the charge now pending against me be disposed of in the Eastern District of the Northern District of Ohio as provided in Rule 20 of the Federal Rules of Criminal Procedure."

He apparently was without counsel at the time he signed that. Would you have any opinion as to whether he was—in the light of the examination made by you subsequent to that time, whether he fully understood and appreciated the significance of the consent that he signed?

The Witness. I would certainly doubt it in view of the condition I found him in in December. I would say he was probably fully as sick or sicker in November. That is only an inference, of course, because I didn't see him then.

The Court. All right. Thank you, Doctor. Did you want to present anything further to the Court?

Mr. Murri. We have nothing further, Your Honor.
14 The Court. Well, in view of the fact that the Court can only accept a plea of guilty, and in view of the opinion expressed by Dr. Grossman, this case will be remanded to the Western Division of the Western District of Missouri for disposition in that jurisdiction.

Off the record.

(Discussion ensued off the record.)

The Court. The Court will be in recess.

Certificate

I hereby certify that the above and foregoing is a true and correct transcript.

ROBERT J. KITCHEN,
Official Court Reporter.

15 In United States District Court, Northern District of Ohio, Eastern Division

[File endorsement omitted.]

Warrant of Removal and Return to U. S. D. C., Western Missouri

February 2, 1953

To any United States Marshal:

An Indictment [1] having been filed before the District Court for the Western District of Missouri, Western Division for the Western District of Missouri charging Earl P. Greenwood with violation of Sec. 2114, T. 18, U. S. C., in that he did assault a clerk employed in the U. S. Post Office, and did rob said clerk employed in the U. S. Post Office, and the above named defendant having been arrested in this District and, after waiving [2] hearing having been committed by a United States Commissioner [3] to your custody pending removal to that district,

You are hereby commanded to remove the above named defendant forthwith to the Western District of Missouri (Kansas City) and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him. Bond to be set at $25,000.00 returnable at Kansas City, Missouri, forthwith.

CHARLES J. McNAMEE,
United States District Judge.

Dated at Cleveland, Ohio, this 2nd day of February, 1953

16 *United States Marshal's Return*

District of ss.

Received the within warrant of removal the 5th day of February 1953 and executed same by delivering the within named Earl P. Greenwood to the U. S. Marshal for Western District of Missouri at Kansas City, Mo., on the 7th day of February 1953.

B. J. McKINNEY,
U. S. Marshal.

By ROLAND S. MOSHER,
Deputy Marshal.

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[1] Strike out if not applicable.
[2] Strike "waiving" if hearing was had.
[3] If commitment was not by a U. S. Commissioner strike out words "by a United States Commissioner."

17 In United States District Court, Western Missouri

Record Entry of February 13, 1953 of Commitment of Defendant to U. S. Medical Center

The defendant appears in open court without counsel, and the defendant is ordered committed to the U. S. Medical Center at Springfield, Mo., for observation. (Mr. Hargus to prepare Order.)

18 In the United States District Court for the Northern District of Ohio, Eastern Division

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EARL P. GREENWOOD, DEFENDANT

[File endorsement omitted.]

Order of Remand

February 2, 1953

The court having heard the evidence of the psychiatrist in this matter, and the attorney for the defendant having entered a plea of not guilty.

IT IS ORDERED that this matter be and the same is hereby remanded to the Western District of Missouri at Kansas City, Missouri.

CHARLES J. McNAMEE,
United States District Judge

19 In the United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Order directing Marshal to deliver defendant to United States Medical Center for examination

February 17, 1953

It appearing to the Court that the defendant in the above entitled cause is under indictment at Kansas City, Missouri, in the Western District of Missouri, charged with violation of Section 2114, Title 18, U. S. C., and from statements made to the

Court concerning the mental condition of the defendant, the Court is of the opinion that an examination should be conducted by the medical authorities at the United States Medical Center for Federal Prisoners, at Springfield, Missouri, for the purpose of ascertaining the mental condition of the defendant before imposition of sentence;

IT IS THEREFORE ORDERED, That the United States Marshal for the Western District of Missouri deliver the defendant into the custody of the authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri, and that an examination be conducted by the medical authorities of said institution for the purpose of ascertaining the mental condition of the defendant, and that a report be furnished the Court as soon as practicable.

IT IS FURTHER ORDERED, That the defendant remain in custody of the authorities at the United States Medical Center for Federal Prisoners at Springfield, Missouri until the said examination has been concluded, after which the United States Marshal for the Western District of Missouri shall return the defendant to the Jackson County Jail at Kansas City, Missouri, to be there held until the final disposition of his case.

Dated at Kansas City, Missouri this 17th day of February, 1953.

ALBERT L. REEVES,
Judge.

21 In the United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Order returning defendant to Kansas City

April 22, 1953

It appearing to the Court that the defendant has heretofore been committed to the United States Medical Center for Federal Prisoners at Springfield, Missouri, for the purpose of ascertaining the mental condition of defendant before imposition of sentence, and report from the Medical Center upon the mental condition of the defendant;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the United States Marshal for the Western District of Missouri transfer the defendant from the United States Medical Center for Federal Prisoners at Springfield, Missouri, to the Jackson County Jail Kansas City, Missouri, for further disposition of this case, the Court having received a report from the United States Medical

Order for further hearing Under 18 U. S. C. 4246

February 2, 1954

Now on this day, it being made to appear to the Court that defendant herein was, on the 17th day of February, 1953, committed to the custody "of the authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri," for the purpose of ascertaining the mental condition of the defendant before imposition of sentence:

And, by Special Progress Report of the Staff of the Medical Center filed herein on February 1, 1954, it appearing that defendant's mental condition has been diagnosed, "schizophrenic reaction, undifferentiated type," and in the opinion of the said Neuropsychiatric Staff of said institution defendant remains "psychotic and incompetent" and "that it is unlikely that this subject will regain his sanity in the near future," and that

It is the recommendation of the said Neuropsychiatric Staff "that consideration be given to transferring this subject to a State Hospital in his State of residence."

In consequence of the foregoing, a further hearing in this
24 Court is necessary under Section 4246, Title 18, U. S. C. A., if defendant is to be further detained in the Medical Center for Federal Prisoners at Springfield, Missouri.

The original commitment of defendant as made in this Court was under authority of the first portion of Section 4246, Title 18, United States Code. It now having been determined that defendant is so mentally defective that he will probably never be able to stand trial on the charge pending against him in this Court, a further hearing must be held which will resolve the power to commit defendant as mentally defective under the conditions specified in Section 4247, Title 18, United States Code, i. e., whether, if defendant is "released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the (defendant) are not otherwise available."

Therefore, the Director and Board of Examiners of the Medical Center for Federal Prisoners should so certify to the Court their "judgment" concerning the above proposition, as provided in Section 4247, supra, within five (5) days of this date.

If the certification of the Director and the Board is as to the affirmative of the above proposition, then it would be helpful to this Court if the Director of the Medical Center will secure from defendant, if possible, his designation of "a qualified Psychiatrist" within the jurisdiction of this Court whom defendant may per-

sonally select to make an examination of him as provided in Section 4247, supra, and certify to this Court the name of such Psychiatrist.

Under Section 4248, Title 18, United States Code, the Attorney General is authorized to terminate the custody of mental incompetents committed to his custody under Chapter 313 of Title 18, U. S. C. A., "at any time" by causing the "transfer of a prisoner committed to his custody to the proper authorities of the State of his residence." Therefore, if, in the interim and before any further hearing is held herein, the Attorney General or his duly authorized agents transfer the custody of defendant to authorities of the State of defendant's residence, then "a certificate stating the termination of the commitment (of defendant) and the grounds therefor" shall also be filed with the Court in this cause.

IT IS SO ORDERED.

ALBERT O. RIDGE,
Judge.

Dated at Kansas City, Missouri, this 2nd day of February, 1954.

In United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Motion for appointment of qualified psychiatrists and for hearing as to defendant's mental competency

Filed June 18, 1954

Comes now defendant, Earl P. Greenwood, through his Attorney, William Burrell, and states to the Court that his mental condition is such that he is unable to understand the proceedings against him or to properly assist in his own defense; defendant moves this Court to appoint at least one qualified psychiatrist to inquire into his mental competency and to report to the Court with respect to such mental competency;

Defendant further moves the Court to order a hearing before such Court in order that a determination may be made as to defendant's mental competency to understand the proceedings against him and to assist in his own defense.

EARL P. GREENWOOD,
By William Burrell,
WILLIAM BURRELL,
Attorney for Defendant.

29 In the United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Order appointing psychiatrists to examine defendant

June 23, 1954

It appearing to the Court that the defendant Earl P. Greenwood, by indictment in two counts, is charged with violation of Section 2114, Title 18, U. S. C.; that representations have been made to the Court to the effect that the said Earl P. Greenwood is of unsound mind and is not able to distinguish between right and wrong; and it, therefore, appearing that inquiry should be made into the mental condition of the said Earl P. Greenwood, who is now confined in the Jackson County, Missouri, Jail;

Now, Therefore, it is Ordered that Dr. Hermon S. Major and Dr. G. Wilse Robinson, Sr., Psychiatrists, be, and they are hereby, appointed, authorized and directed by the Court to examine into the mental condition of the said Earl P. Greenwood, and to make a written report of their findings to this Court as soon as practicable, in which report the said Psychiatrists shall state their opinion:

(1) Whether or not the said Earl P. Greenwood, on the 22nd day of October, 1952, was in possession of mental
30 faculties so as to distinguish between right and wrong and to comprehend the nature and quality of the act with which he is charged on each count of the indictment herein, and, if he did know it, that he knew he was doing a wrongful act in violation of law at the time of the commission thereof.

(2) Whether or not the said Earl P. Greenwood is now in possession of mental faculties so as to enable him to comprehend the nature of the charge made against him, and to rationally aid in the conduct of his defense thereto.

(3) Whether or not the said Earl P. Greenwood is in such condition of mind and memory as to recall the evidence connected with the offense with which he is charged, so as to enable him to advise with counsel in a rational manner and to testify at the trial of this cause, if called upon so to do.

(4) If defendant, Earl P. Greenwood, is laboring under such a defect of reason from disease of mind as not to know the nature and quality of the act with which he is charged, or, if he did know it, that he did not know he was doing wrong in violation of law, whether or not, if released from said charge, he will probably endanger the safety of the officers, the property, or other interests of the United States.

IT IS FURTHER ORDERED, that two (2) certified copies of this order be given to the Probation Officer of this Court, or one of his Deputies, and that they be hereby directed to convey the order of this Court to the above-named Physicians, above appointed, and to make such arrangements as are necessary, expedient and proper for their examination of the said Earl P. Greenwood.

ALBERT C. RIDGE,
Judge.

Dated at Kansas City, Missouri, this 23rd day of June, 1954.

Cr. Form No. 1-A

31 Warrant of Removal on Complaint or Information

United States District Court, Northern District of Ohio:
Eastern Division

No. 21289

Filed June 24, 1954, J. C. Truman, Clerk, —— S. Smith, Deputy.

UNITED STATES OF AMERICA

v.

EARL P. GREENWOOD

Warrant of removal from U. S. D. C.: Northern Ohio

To any United States Marshal:

An Indictment [1] having been filed before the District Court for the Western District of Missouri charging Earl P. Greenwood with violation of T. 18, Sec. 2114 U. S. C.; in that he did assault a post office clerk with intent to rob, steal and purloin mail matter and other property of the United States; and the above named defendant having been arrested in this District and, after waiving [2] hearing, having been committed by a United States Commissioner [3] to your custody pending removal to that district,

You are hereby commanded to remove the above named defendant forthwith to the Western District of Missouri, and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him. Bond to be set at $5,000.00 returnable at Kansas City, Missouri, forthwith.

CHARLES J. McNAMEE,
United States District Judge.

Dated at Cleveland, Ohio, this 10th day of June 1954.

[1] Strike word not applicable.
[2] Strike "waiving" if hearing was had.
[3] If commitment was not by a U. S. Commissioner strike out words "by a United States Commissioner."

Return

Northern District of Ohio, ss:

Received the within warrant of removal the 10th day of June 1954 and executed same by delivering into custody of the United States Marshal, at Kansas City, Mo., the within named Earl P. Greenwood, on June 15th, 1954.

XAVIER NORTH,
U. S. Marshal.
By Norman Black,
NORMAN BLACK,
Deputy Marshal.

32 In United States District Court, Western Missouri

Record entry of July 2, 1954—Setting hearing and returning defendant to U. S. Medical Center.

Deft. appears in person & by counsel William Burrell, appointed by the Court. Hearing under Section 1246 1247 & 1248 set for July 15, 1954. Deft. to be committed to Medical Center for further examination and is to be returned on or before the 13th day of July to this Jurisdiction by U. S. Marshal. U. S. Attorney to prepare proper order. Order directing Marshal to transport deft. to Medical Center for further examination filed.

33 In the United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Order directing transfer of defendant to U. S. Medical Center.

Filed July 2, 1954

It appearing to the Court that Earl P. Greenwood, defendant herein, having heretofore been examined by the authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri with respect to his mental condition, and it further appearing that no hearing has been conducted in this Court with respect to such mental condition of the defendant, and that the authorities at the United States Medical Center for Federal Prisoners have not had an opportunity to examine the defendant since April 30, 1954:

IT IS, THEREFORE, ORDERED, That the United States Marshal for the Western District of Missouri deliver the defendant into

the custody of the authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri; and

It Is Further Ordered, That the authorities of the said Medical Center shall examine the defendant to determine whether he is presently insane so as to not be able to distinguish between right and wrong, in a legal sense, and if so the duration thereof, or otherwise so mentally incompetent as to be unable to understand the proceedings against him or to properly assist in his own defense, and if the defendant be presently so mentally incompetent, then the said authorities of the United States Medical Center for Federal Prisoners are requested to determine whether such mental incompetency is permanent or temporary, and whether the defendant, if released from custody he would probably endanger the safety of the officers, property, or other interests of the United States.

It Is Further Ordered, That the defendant be returned to the Jackson County Jail at Kansas City, Missouri, on or before July 15, 1954 for further proceedings herein.

Albert O. Ridge,
Judge.

35 In United States District Court, Western Missouri

Record entry of hearing of July 15, 1954

The defendant appears in open court with counsel for hearing on the defendant's sanity. Testimony is heard and the matter is submitted to the Court and by the Court, taken under advisement.

36. In the United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Order and memorandum committing defendant to U. S. Medical Center

July 30, 1954

Now on this day, plaintiff appearing by Assistant United States Attorney O. J. Taylor, and defendant appearing in person and by William Burrell, Esquire, counsel for defendant, appointed by the Court, there is submitted to the Court motion of the United States Attorney praying for a determination of mental competency of defendant to stand trial on the charges presently pending against him. Subsequent to the filing of the above motion by the United States Attorney, the Court appointed two qualified

Psychiatrists to examine into the mental condition of defendant, as provided in section 4244, Title 18, U. S. C. A. In addition thereto, the Court ordered defendant committed to the custody of the Warden of the Medical Center for Federal Prisoners at Springfield, Missouri, for further examination by Psychiatrists of that institution as to the mental condition of defendant.

There is presently adduced before the Court the testimony of the two Psychiatrists above referred to, as well as that of the Medical Director and Chief of the Psychiatric Service of
37 the Medical Center. The Court having heard and received the testimony of said Psychiatrists, together with their reports of their examination of the mental competency of the defendant, the Court makes the following findings of fact, as provided in section 4246, Title 18, U. S. C. A.

(1)

Accused herein is presently insane and so mentally incompetent that he cannot stand trial on the criminal charges pending against him in this Court.

(2)

If released, accused probably will endanger the safety of officers, the property, or other interests of the United States.

(3)

No suitable arrangements for the custody and care of accused, other than that which may be provided by commitment of accused to the custody of the Attorney General of the United States, are presently available.

As a consequence of the foregoing findings so made by the Court, defendant is now ordered committed to the custody of the Attorney General of the United States, or his duly authorized agents: (1) until the sanity or mental competency of the defendant shall be restored; (2) until the mental condition of the defendant is so improved that if he is released he will not endanger the safety of the officers, the property, or other interests of the United States; or (3) until suitable arrangements can be made for the custody and care of the defendant by the State of Ohio, the State of the accused's residence.

38 It is further ordered that defendant remain in the custody of the Attorney General of the United States until whichever event above stated shall first occur.

ALBERT O. RIDGE,
Judge.

Dated at Kansas City, Missouri, this 30th day of July, 1954.

Memorandum

The indictment in two counts returned against defendant, charging armed robbery of a United States Post Office and jeopardizing the life of a postal clerk, was filed in this Court on November 20, 1952. Thereafter, in accordance with Rule 20, Federal Rules of Criminal Procedure, defendant sought to have said charge transferred to the United States District Court for the Northern District of Ohio. Transfer papers were executed and lodged in Court accordingly. When defendant appeared before the United States District Court for the Northern District of Ohio, and before being required to plead to said charge, a psychiatric examination of defendant was ordered by that Court, at the suggestion of the United States Attorney for the Northern District of Ohio. After such examination and report thereon made to that Court, a hearing was held on the issue of mental competency of defendant to enter a plea. After hearing, the Court found defendant to be mentally incompetent to enter any such plea, and remanded defendant and the charge pending against him to this Court for disposition.

On February 15, 1953, defendant appeared before Judge Reeves on the charge pending against him. From statements made to the Court concerning the mental condition of defendant, Judge Reeves ordered that he be delivered "into the custody of the
39 authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri, and that an examination be conducted by the medical authorities of said institution for the purpose of ascertaining the mental condition of the defendant," and report thereon to the Court.

On April 15, 1953, a copy of the report so ordered was lodged with this Court. It was the opinion of the examiner (Chief of the Psychiatric Service of the Medical Center) that defendant "is legally insane. Although he correctly verbalizes the difference between right and wrong, he is unable to properly choose between, because he is motivated by insane delusions. In addition, his delusional thinking renders him unable to properly understand the nature of the charges pending against him and his mental confusion and depression interfere with his ability to cooperate with counsel in his defense."

Thereafter, defendant remained in the custody of the Warden of the United States Medical Center for Federal Prisoners at Springfield, Missouri, until May, 1954, at which time defendant was transferred from the Medical Center for Federal Prisoners at Springfield, Missouri, to the custody of authorities of the State of Ohio, in compliance with an order of this Court made under date of February 2, 1952.

On January 26, 1954 the Neuropsychiatric Staff of the Medical Center for Federal Prisoners at Springfield, Missouri, unanimously agreed that defendant "remains psychotic and incompetent." The Staff also agreed that defendant's mental illness "is chronic, of long-standing and that the prognosis for recovery is poor."

After defendant was lodged in the custody of the authori-
40 ties of the State of Ohio, he apparently was, in the opinion of such authorities, sane, and released from further custody by said State. The charge originally made against defendant remaining pending in this Court, a praecipe for warrant was filed in this cause by the United States Attorney, and alias warrant was issued and served on defendant, and he was returned to the jurisdiction of this Court pursuant to the indictment originally returned against him.

Thereafter, on June 18, 1954, "Motion for Appointment of Qualified Psychiatrists and for Hearing as to Defendant's Mental Competency" was filed by counsel appointed by the Court to represent defendant in these proceedings. It was pursuant thereto that the two Psychiatrists heretofore mentioned were appointed by this Court. In the opinion of the two Psychiatrists so appointed by the Court, defendant, after examination, was believed to be sane, and report by said Psychiatrists was so made to the Court. Thereafter, a hearing was held regarding that issue, at which the Psychiatrists gave testimony, as did the Chief of the Psychiatric Service of the Medical Center for Federal Prisoners at Springfield, Missouri. In addition thereto, a report of the Neuropsychiatric Staff of the Medical Center, under date of July 8, 1954, was received in evidence. The conclusion of the Chief of Psychiatric Service, as well as that of the other members of the Neuropsychiatric Staff, was that defendant remained "legally insane by reason of a major mental disorder which would prevent him from having a proper understanding of the proceeding pending against him and which also impairs his ability to properly assist in his own defense. They are further agreed that this
subject's prognosis for recovery appears to be poor and
41 that he will probably require indefinite hospitalization to
e insure his own safety and that of society. The staff does not consider the subject to be potentially dangerous except to the extent that if released he might persist in engaging in criminal activities similar to those with which he is presently charged."

The entire file, together with all reports relating to the mental competency of the defendant, is made a part hereof.

It is upon the facts aforesaid that the order of commitment first above made is premised. From such facts and defendant's appearance in open Court, it clearly appears to this Court that defendant is presently insane and mentally incompetent to stand trial on the charges pending against him. There is no other recourse available to the Court than to enter a commitment herein, as above made.

ALBERT O. RIDGE,
Judge.

Dated at Kansas City, Missouri, this 30th day of July, 1954.

Application for leave to proceed in forma pauperis, affidavit in support thereof, and order granting same (omitted in printing).

46 In the United States District Court for the
Western District of Missouri,
Western Division

[Title omitted.]
[Title endorsement omitted.]

Notice of Appeal

Filed August 9, 1954

Name and address of appellant: Earl P. Greenwood, Cleveland, Ohio.

Name and address of appellant's attorney: William J. Burrell, 1001 Dwight Building, 1004 Baltimore Avenue, Kansas City, Missouri.

Offense: Armed robbery of United States Post Office and jeopardizing the life of a postal clerk.

Concise statement of judgment or order: Order entered on July 30, 1954, finding the defendant insane, etc. and committing the defendant to the custody of the Attorney General of the United States: (1) until the sanity or mental competency of the defendant shall be restored: (2) until the mental condition of the defendant is so improved that if he is released he will not endanger the safety of the officers, of the property, or other interests of the United States; or, (3) until suitable arrangements can be made for the custody and care of the defendant by the State of Ohio, the State of the accused's residence.

Name of institution where now confined: United States Medical Center for Federal Prisoners at Springfield, Missouri.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the above stated judgment.

Dated: August 5, 1954.

EARL P. GREENWOOD,
By WILLIAM J. BURRELL,
Attorney for Appellant.

Service of Copy of above acknowledged this 6th day of August, 1954.

O. J. TAYLOR,
Assistant U. S. Attorney.

47 In the United States Court of Appeals for the Eighth Circuit

Designation of record on appeal

[Title omitted.]
[Title endorsement omitted.]

Filed August 18, 1954

Comes now the appellant, Earl P. Greenwood, by his attorney, and designates all of the original files and a complete transcript of the evidence for inclusion in the record on appeal in this cause, all pursuant to Rule 8.(b) of the Rules of the United States Court of Appeals for the Eighth Circuit.

William J. Burrell,
WILLIAM J. BURRELL,
1061 Dwight Building, 1004 Baltimore Avenue,
Kansas City, Missouri, Baltimore 3420,
Attorney for Appellant Earl P. Greenwood.

Received copy of the foregoing this 18th day of August 1954.
O. J. TAYLOR,
Attorney for Respondent,
United States of America.

48 In the United States District Court for the Western District of Missouri, Western Division

[Title omitted.]
[File endorsement omitted.]

Order directing reporter to prepare transcript

September 1, 1954

Pursuant to an order heretofore entered on August 9, 1954, in the above entitled cause, authorizing the defendant to prosecute

said appeal in forma pauperis and that the expense of furnishing the necessary record on appeal be paid by the United States, it is therefore ordered that the official reporter prepare an original and one carbon copy of the transcript of the testimony in said cause to be lodged with the Circuit Court of Appeals, and one carbon copy for the defendant, in accordance with 28 U. S. C. 92 (C) and Bulletin 320, said original and one copy to be filed in the United States Court of Appeals for the Eighth Circuit, and one carbon copy to be furnished to said defendant.

Dated at Kansas City, Missouri, this 1st day of September 1954.

ALBERT O. RIDGE,
District Judge.

49 In the United States District Court for the
Western District of Missouri,
Western Division

[Title omitted.]
[File endorsement omitted.]

Transcript of Proceedings

July 15, 1954

BE IT REMEMBERED that heretofore, on Thursday, the 15th day of July 1954, the above entitled cause came on for hearing before the Honorable Albert A. Ridge, one of the Judges of said court, at Kansas City, Missouri.

Appearances

The Plaintiff was represented by Mr. O. J. Taylor, Assistant United States Attorney.

The Defendant was present in person, and represented by his counsel, Mr. William J. Burrell.

(Whereupon, the following proceedings were had and entered of record:)

50 *Colloquy between Court and Counsel*

The COURT. Mr. Taylor, have you ever filed a written motion in connection with this hearing?

Mr. TAYLOR. No, Your Honor, but there was a motion filed by Mr. Burrell on behalf of the defendant, I believe, that requested a hearing.

Mr. BURRELL. Yes, it did, requested the examination and the hearing, Your Honor.

The COURT. Suppose you supply the record with a written motion following along Mr. Burrell's motion, because it seems to me under Section 4244 that it is the obligation of the District Attorney to file the motion. So there will be no question about it, we will treat Mr. Burrell's motion as being sufficient to go ahead with this hearing and that you are joining in his motion.

Mr. TAYLOR. Yes, sir. I didn't think it was necessary since the second sentence of that said, "upon such a motion," or "upon a similar motion in behalf of the accused."

The COURT. Let the Government go ahead with their testimony. Let the record show that this is a hearing under Section 4244 of Title 18, United States Code, upon motion of the defendant in this case for a hearing as to his mental competency, after arrest and before the imposition of sentence on the charge laid against him.

51 Dr. HERMAN S. MAJOR, called as a witness on the part of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

By Mr. TAYLOR:

Q. Will you state your name, sir?

A. Herman S. Major, M. D., Medical Director, Major Clinic, at 3100 Euclid Avenue.

Q. How long have you been engaged in the practice of medicine, Doctor?

A. Since the 7th of April 1905.

Q. Have you specialized in any particular field of medicine?

A. Specialized in nervous and mental diseases since the 10th of June 1913, 41 years last month.

Q. Would you just tell the Court briefly about your qualifications for the examination of mental diseases?

A. I did general practice eight years, assistant superintendent and clinical director of the State Hospital at Fulton, Missouri, from 1913 until 1921. I had leave of absence in 1918 and 1919; I was in the army, did nothing but nervous and mental work, and I have been Medical Director of the Major Clinic at 3100 Euclid Avenue since the 3rd of October 1921, and we specialize in the treatment of nervous and mental diseases and liquor and drug addiction.

Q. Have you had occasion pursuant to the order of this court to examine one Earl P. Greenwood?

52 A. Yes, sir, June 8, 1954.

Q. Where did that examination take place?

A. In the County Jail.

REDIRECT EXAMINATION

By Mr. Taylor:

Q. Doctor, I would just like to ask one further question. What would be your opinion as to whether if this man were released he would be dangerous to the interests of the Government, the United States, the officers of the United States, or other property?

A. A little louder, please.

Q. What would be your opinion as to whether this man, if he were released, might be dangerous to the officers, property or other interests of the United States?

A. If he is released?

Q. Yes, whether he might continue activities such as that for which he was charged here or whether he might——

A. Oh, I don't know whether he would become dangerous or not, whether he will become a danger to society or not. He will probably do some more stealing.

Q. It might possibly involve the property of the United States?

A. He might rob some more post offices.

Q. Would you think that if he has robbed two post offices, he would be inclined to rob other post offices rather than some other type of business?

A. That seemed to be his specialty, wasn't it?

Mr. Taylor. That is all. Thank you.

Mr. Burrell. No further questions.

(Witness excused.)

Mr. Taylor. Should Mr. Burrell take this witness next from the beginning or does it make any difference?

The Court. That is up to you.

Dr. Charles E. Smith, called as a witness on the part of the defendant, was duly sworn and testified as follows:

DIRECT EXAMINATION

By Mr. Burrell:

Q. Will you state your name, please?

A. Dr. Charles E. Smith.

Q. Where do you live, Doctor?

A. Springfield, Missouri.

Q. And what is your profession?

A. I am a physician.

Q. And where are you now working?

A. I am a commissioned officer in the United States Public Health Service, assigned to the Department of Justice, and I am

Q. In Jackson County?

A. Yes.

Q. That is the gentleman who is sitting at the counsel table today?

A. Yes, sir, that is right: I examined him from 9:00 o'clock in the morning till 10:20.

Q. Would you just tell the Court in your own words what you did in examining him, everything that happened there, and your conclusions in regard to his present condition?

A. Well, I made a physical examination. We found he was in good condition physically, found nothing wrong with him physically. I talked with him at length and he very frankly told about these different things that he stole and said he did it because he needed the money. He had no hallucinations or no delusions that I could find out. The only thing he talked about was one reason why he stole the money was to get some black candles, I think that he was just a——

Q. What purpose did he have in wishing to get some black candles, if you recall?

A. Well, he said some woman had bewitched him, don't you see, and he had to pay $150.00 apiece for the black candles and he needed five of them, but I think that was just merely not a delusion on his part, but just a superstition that so many colored people have.

53 Q. From examining him did you draw a conclusion as to whether he is now mentally competent to stand trial, to understand the nature of the charges against him and to assist counsel in defending his case?

A. In my opinion at the present time, when I examined him on June 28th, he was sane and thoroughly competent. According to the report in 1953 he had mental trouble, but if so, he has certainly made a complete recovery. He was not insane at the present time when I examined him.

Q. Dr. Robinson was present when you made that examination?

A. Yes, Dr. Robinson and I worked together.

Mr. Taylor. I believe I have no further questions.

CROSS EXAMINATION

By Mr. Rummel:

Q. Doctor, how long did you examine Mr. Greenwood in the County Jail?

A. On June 28, 1954, from 9:00 a. m. to 10:20 a. m.

Q. That is one hour and twenty minutes?

A. Yes, sir.

assigned as the Chief of the Psychiatric Service at the Medical Center for Federal Prisoners, which is an institution of the Bureau of Prisons.

Q. As such, Doctor, are you in charge of the Psychiatric Department there at the Federal Prison in Springfield?

A. That is correct, I am in charge of it.

Q. How many doctors do you have on your staff here that are psychiatrists?

A. There are four psychiatrists other than myself, that is, a total of five of us on my staff.

Q. You have been there for how long?

77 A. I finished three years there the first of this July.

Q. You have been in charge during all that time?

A. That is so, I have been in charge.

Q. How many patients do you have ordinarily that are in your care?

A. Our present average census is about 500.

Q. 500 patients?

A. 500 psychiatric patients. This is a medical center. There are medical and surgical patients in this hospital also. There are about 300 other patients there, broken down in the other services.

Q. Just very briefly, what has been your training for your job?

A. I graduated from George Washington University School of Medicine in 1941, and I interned in the Marine Hospital in Baltimore, Maryland, that is a Public Health Service Hospital. Shortly after that I entered the Army and I served in the Army from January of 1943 until December of 19—well, actually until sometime early in 1946. I entered in the specialty of psychiatry in December of 1945 and I have been engaged in psychiatry and neurology since that time, approximately four years of the period since 1945 have been spent in training, including post-graduate courses in Columbia University in New York, George Washington University, and other places.

Q. In that specialty?

A. That is so.

78 Q. Doctor, I believe Earl Greenwood, who is the defendant there at the counsel table, was in the hospital there at Springfield?

A. Yes, Counselor. I examined Greenwood for this Court.

Q. Do you recall the date? Do you have all your medical records with you?

A. If I may refer to these records, I have the complete records.

The Court. Yes, refer to your records.

Q. It was after you got up there to his cell where he was, was moved, wasn't he, into another room?

A. He was moved—had already been moved down there the doctor's office on that floor, I have forgotten what floor.

Q. And you and Dr. Robinson got together in a room with M Greenwood?

A. Yes, sir.

54 Q. Was anybody else there?

A. No, sir.

Q. Now, isn't it a fact that you started out this examinatio by accusing Greenwood of a crime?

A. No, sir, we did not.

Q. You never accused him of anything during the entire e amination?

A. No.

Q. You didn't accuse him of a thing?

A. No. He very frankly told us that he stole these things fro the drug store and post office.

Q. You tried to get out of him why? You tried to pump o of him why he was doing everything, didn't you?

A. That is right.

Q. Now, you said he had no delusions, no hallucinations?

A. No, sir.

Q. What do you call these statements that he gave you abou buying these candles to remove a spell a spiritualistic woman ha put on him? He told you about that, didn't he?

A. Yes, but I don't think that is any delusion.

Q. It is your opinion that that is not a delusion?

A. That is right.

Q. Did he tell you about recently attempting to commit suicide Did he tell you about that?

A. No.

Q. Did you ever ask him if he had ever attempted to comm suicide?

A. No; there was nothing said about that that I remembe anything about.

55 Q. Did you see his arms were bandaged and did you se the heavy scars running up both of the insides of his wrists

A. Well, I didn't know what that was.

Q. Did he tell you about being in a mental institution at Spring field, Missouri, for some 15 months since he had been arrested

A. He didn't say how long he had been there.

Q. Did you go into his family background at all?

A. Yes, we had the family history.

Q. What did he tell you about his family history?

A. Well, he didn't say very much about it.

By Mr. Burrell:

Q. You have all your records with you, all the hospital records concerning Greenwood?

A. Yes, I do.

Q. That is that complete file that you have there?

A. That is so.

Q. And he entered the hospital when?

A. Our records show he was committed to the Medical Center on March 7, 1953, for psychiatric examination under provisions of Section 4244, Public Law 285.

Q. Go right ahead.

A. I was going to say that I personally examined Greenwood, he was observed, that is, he underwent examinations and observations over a period of close to a month, I would say. I submitted a report to this Court which is dated April 8, 1953.

The Court. And that is the first formal report which was submitted to the Court. After your examination of
79 Greenwood for that period of one month, what was the conclusion to which you came as to his condition?

The Witness. My conclusion at that time was that Greenwood had a schizophrenic reaction, undifferentiated type, acute.

The Court. Just what does that mean, Doctor? Explain that to us in the record as best you can, so we will all understand.

The Witness. Yes, Your Honor. Schizophrenia is a major mental disorder. Also commonly called a psychosis, in which there are two major symptoms. One is a disturbance in the emotional responses, and the other is some confusion in the thought process. The confusion—that is, the disturbance in the emotional responses is most marked, which is the tendency of the emotional responses of the individual to be inappropriate to the situation in which he finds himself. That is, he tends to have grief which is not appropriate to the situation in which we see him, or on the other times he may be angered to a point which is definitely beyond the proportions which one might expect for an individual in a similar circumstance. There are certain secondary manifestations of this disease which are generally felt to arise from these two primary symptoms or manifestations which I
80 mention; and these include delusions, that is, false ideas which can't be corrected by ordinary reasoning or logic, and hallucinations, which are false perceptions, and then there are several other things which may go along with this. Usually these patients don't have insight into their condition, they don't appreciate the fact that they are ill, and obviously individuals with this sort of a disease have judgment which is disordered. That is, their judgment is impaired.

Q. You don't remember anything that he told you about his history?

A. No, I don't.

Q. Did you inquire into the problems that he had down at the institution at Springfield?

A. Well, the only thing that he said was they were trying to make him say he was crazy and he wasn't, he wasn't crazy.

Q. Well, do you think a man is the best judge of his own sanity?

A. No, you can't always depend on that.

Q. You can't always depend on that, can you, Doctor?

A. No.

Q. He was tense, wasn't he?

A. No, he didn't seem to be tense to me, he talked to us very freely.

Q. Well, he was tense, though, wasn't he?

56 A. Well, just what do you mean by tense?

Q. Well, we will pass that. What about his being cooperative? Was he cooperative or was he evasive?

A. At times he was cooperative, but other times when we would ask him questions he would seem to get kind of angry.

Q. Are you familiar—I am sure you are—with a mental illness known as schizophrenia?

A. Yes, sir.

Q. What are some of the symptoms of that?

A. Well, schizophrenia, or dementia praecox as it used to be called, they hear imaginary voices.

Q. Sometimes called auditory hallucinations?

A. Yes, sir, that is right.

Q. What are some other symptoms?

A. Well, in those cases, they don't realize that they have any mental trouble because to them all this is absolutely—all these things are absolutely true.

Q. You are saying that a schizophrenic doesn't know that he has mental trouble?

A. No.

Q. He doesn't know that?

A. No.

Q. Isn't it a fact that a schizophrenic can have bad times and periods of remission?

A. Some of the mild cases do, but the most of those cases of schizophrenia don't get well, they are absolutely incurable.

Q. They are just bad all the time?

A. The only thing that gets any relief for them is using

57 the electric shock treatment.

Q. That is the only relief, drugs don't do any good at all?

A. And any case that has been going on for a period of five years is considered hopeless.

A. That is so. He had been observed by myself as well as several other doctors.

Q. Was his condition tense and tremulous?

A. Generally, so.

Q. Was that indicative—I mean—

A. Yes, that was certainly a symptom of the disorder. In itself it is not diagnostic of schizophrenia, but coupled with these other findings.

Q. What about depression, was there any depression in his attitude?

A. Very definitely.

Q. Does a schizophrenic tend to withdraw to himself and away from others?

A. That is our experience. The schizophrenic tends to be secluisve, tends to shun associations with others, and doesn't enter into the usual activities which go on in the hospital.

Q. Did you find this condition in Greenwood at that time?

A. Yes, we did.

Q. Did you state the nature—did he give you any reason—say anything about these candles that we have heard talked about today?

83

A. Yes, Counselor, he did. The story actually goes back some time, as he told it to me. I will quote you here from my original report. "He blames all of his present difficulties on an incident which occurred prior to his entry into the army when he was living in a rooming house in Cleveland, Ohio." I should note that he entered the army in February of 1941. "He states that there was a woman living in this house who was a tea leaf reader and that she 'Put some kind of a spell on me.' He states further, 'One night I got off from work and went downtown, came back home; listened to the radio. It seemed like I was falling all over the bed and people were screaming.' Greenwood states that he told his girl friend 'Ruby' about the voices and that she, 'Went to see a spiritualist for me.' He states that his girl friend thought that he should go and see this spiritualist instead of taking drugs and that when he continued to take drugs, this led to a falling out between he and Ruby." Then he states, "Aunt Olivia told me to get out of the spell by going to Baton Rouge and burning black candles."

It is of interest to note that, in discussing the incident Greenwood made the following statement: "I just made up my mind to get me some money to go on down to Baton Rouge to get the

84 candle to take this spell off. I don't believe it is a spell but just in case it is, I'd be sure."

Q. But you are saying to the Court and to me here that schizophrenics are just bad all the time?

A. Yes.

Q. They don't have periods of remission, and then periods when they are more sick than others, is that right?

A. That is right.

Q. One of the symptoms of schizophrenia is withdrawing into yourself, isn't it?

A. Yes, sir.

Q. Another one is extreme tension, the man doesn't know where to go or what to do, isn't that right, and he has illusions, isn't that right, and he has hallucinations?

A. That is right. I couldn't find any of those present.

Q. You didn't find any of those in him?

A. No, sir.

Q. Now, isn't schizophrenia a complicated mental illness?

A. Well, as a general rule you can diagnose a real case of schizophrenia without much trouble.

Q. In about how long? In about an hour and 20 minutes?

A. Yes, or sometimes less.

Q. So you can just take a man with schizophrenia and you say in an hour and 20 minutes you can diagnose his condition?

A. I think so, yes, sir.

58 Q. Do you do that in your practice? Do you have any schizophrenics in your treatment now?

A. Yes, I run into those cases all the time.

Q. You want to be just as fair to Mr. Greenwood as to the United States or to this Court or to me?

A. Yes.

Q. And if a man were to diagnose such a condition of schizophrenia wouldn't you have to observe that man from time to time and observe his behavior? Wouldn't that be the best way to do it?

A. Well, if he really had that.

Q. Not if, wouldn't that be the best way to do it?

A. Repeat that again, please?

Q. To diagnose his condition wouldn't it be best to watch him from time to time and day to day and observe him in order to properly diagnose his condition?

A. No, in a case of schizophrenia.

Q. That wouldn't be the best way at all?

A. That wouldn't be necessary.

Q. And that wouldn't be the best way to do it?

A. It wouldn't be necessary because you would be able—he showed no symptoms of mental trouble.

Q. Doctor, do you have an opinion as to that time as to whether or not Greenwood was actually suffering from these delusions and these hallucinations, based upon your observation of him?

A. Yes, I did have an opinion.

Q. And what was that opinion?

A. I had an opinion that these were insane delusions, that these were ideas which, as I say, could not be corrected by ordinary reasoning or logic.

Q. Do you have an opinion whether that had any influence on the alleged robbery of the post office?

A. As I get the story from him; yes, that is the way I get it.

Q. It is your opinion that that drove him to rob the post office?

A. That is so.

Q. Now, Doctor, what was your original—your next report on him—well, by the way, did the staff join in this first report or was that just your

A. There was no formal endorsement of—well, I shouldn't say that. I think this original report was submitted without any formal endorsement by the staff, that is the usual practice in these examinations.

Q. The next formal report I have is January 26, 1953?

A. Yes.

Q. And that is a report by—by the staff, is that Dr. Graff, Dr. Kemker and yourself?

A. Yes, there were several other doctors sitting in. I will just check to see who was present for that examination. A notation here states that there were five doctors present for this examination. I point that out as it is only signed by three members. That has been our routine. We have three doctors sign it, but there were five there.

Q. Had Greenwood been there under the observation of your staff since April of 1953 then?

A. Yes.

Q. Up till January, 1954?

A. Yes.

Q. And did your staff reach a unanimous conclusion at that time?

A. Yes, as the record states, the staff agreed unanimously.

Q. Would you, for the record, state what was the unanimous conclusion of the staff in January of 1954?

A. "The Neuropsychiatric Staff agreed unanimously that the patient remained psychotic and incompetent. The Staff agreed that the patient's illness is chronic of long standing and that the prognosis for recovery is poor. The Staff recommends that the committing court be advised that our finding indicate that it is

Q. I am just talking to you generally about how you would diagnose a condition now, not about Mr. Greenwood. He told you about his hallucinations, didn't he?

A. Well, he didn't have any.

59 Q. Or delusions?

A. No.

Q. This business about the candles, that is perfectly normal?

A. Well, I think that is more just a superstition.

Q. You never tried in any manner, shape or form to get this man's confidence and to try to really find out if there was anything wrong with this man's mind, did you, Doctor?

A. He talked to us very freely and I couldn't find anything wrong.

Mr. BURRELL. I have no further questions.

REDIRECT EXAMINATION

By Mr. TAYLOR:

Q. Doctor, you did, prior to making this examination, have the benefit of certain reports that had been rendered by other doctors?

A. Yes, one from Cleveland, Ohio, I believe, and from Springfield.

Q. So that it wasn't necessary for you to go into the family history?

A. No, I had the family history.

Q. You had that by means of the reports?

A. Yes.

Q. Would you say that it would be possible that—now, you examined him about the 30th of June. Would it have been possible—

A. 28th of June.

Q. —that about a week later, about the 7th of July that he could have been examined by other phychiatrists and that his condition would have changed to the point where they could have considered him to be insane?

60 A. I wouldn't hardly think a thing of that sort would be possible.

Q. Do you have any opinion as to whether this man has been acting in an attempt to convince people that he was insane? That he is capable of so acting that he would convince certain psychiatrists that he was insane?

A. I think he is capable of acting if he wanted to do so.

Q. Do you think he was attempting to convince you and Dr. Robinson that he was insane?

unlikely that this subject will regain his sanity in the near future. Therefore the Neuropsychiatric Staff recommends that consideration be given to transferring this subject to a state hospital in his state of residence."

86 Q. Now, when he first came in the hospital, what was the treatment or how was he kept there in the hospital?

A. Well, the patient remained on the acute service in our hospital, if I am not mistaken.

Q. I believe it is in the second paragraph of this report that you are referring to.

A. Yes. Well, he was in the acute unit, I think, during his whole stay with us, if I am not mistaken. Now, the acute unit is divided into three sections, and the first portion of his stay with us he spent in the—what you might call the maximum supervision unit; that is, the one for the most acutely disturbed; then there are two other units to which the patients, you might say, graduate as they improve, and it is my impression that he improved to the extent that he was able to go to the best of those three units, but that is as far as he got. He still was under maximum supervision.

Q. Did he have periods of extreme tension?

A. Yes, he did.

Q. What treatment would you give him for that?

A. Well, he was given sedative hydro-therapy treatment, that is, continuous flow tub baths, and we also used sheet packs. That is, these are sheets which are wrung out in tap water and the patient is wrapped in them. That was a sedative effect. In addition we used chemical sedation. However, we tried to avoid

87 chemical sedation as far as possible because of its habit forming properties.

Q. He wasn't—he told you something about taking narcotics, did he, before?

A. Yes, Greenwood told me quite candidly, I suppose you might say, that he had taken narcotics for the relief of tension. He makes a statement which I quoted in my report, which I think very aptly gives his viewpoint on it, and I think it is rather descriptive. He states that narcotics are, "A gift of God to mankind to relieve man of worries. That is the only time I don't be bothered when I get my drugs with me."

Q. Did you conclude that he was an addict?

A. No, I don't think that he was an addict. At this time we received him there was no evidence of any symptoms of addiction.

Q. It is your opinion that he used them to relieve his tension?

A. Yes.

Q. Which was a part of his mental illness?

A. Yes.

A. No, he insisted that he was not insane. The word he used he said, "I am not crazy."

Mr. Taylor. That is all.

By the Court:

Q. Now, Doctor, you went into the question of whether or not he understood the nature and quality of this act with which he is charged before this Court with him, did you?

A. Yes.

Q. That was with reference to——

A. He admitted stealing these things very frankly, although he said, "I didn't steal it, I just took it."

Q. Just took it?

A. Just took it.

Q. From your examination and discussion with him do you think that he understood that he was being charged in this court with felonious assault upon one Callie Murphy who was a clerk in a post office and that he, in the perpetration of this
61 assault, attempted to steal from the mails, rob the mails, did he seem to understand that?

A. He seemed to understand that and he didn't deny any of those.

Q. Do you think that this man knows the difference between right and wrong from a legal standpoint?

A. I see no reason why he shouldn't.

Q. All right.

A. I want to be absolutely fair, it made no difference to me.

Q. Well, of course, Doctor, that is the reason the Court appointed you, because the Court thought you and Dr. Robinson would be fair. What we want to know is whether or not in your opinion from your examination this man knows the difference between right and wrong and is capable of standing trial in this court.

(Witness excused.)

The Defendant (to Dr. Major). Get away from me. Stay away from me.

The Court. Sit down.

Go ahead with your examination.

62 G. Wilse Robinson, called as a witness on the part of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

By Mr. Taylor:

Q. Will you state your name, sir?

A. Pardon me, I have defective hearing.

Q. All right, sir, I will step around here.

Q. Now, did you ever try him out on any activities while he was in the hospital there?

A. Yes, we did. We tried very hard to encourage him to socialize and to engage in various activities which we have, rehabilitative activities and occupational therapy projects, and we knew of his interest in playing the drums, we endeavored to get him back to that.

Q. Did he play the drums?

A. Not—we didn't have much success with that. As I recall, we got him over to play the drums one afternoon in the music department and he became quite disturbed over there, feeling that someone was operating against him, or something.

Q. He wasn't able then for any length of time to carry on any activity?

A. No, very definitely not.

Q. Even though you tried very hard during that period to improve his condition?

A. Yes, that is so. There was no, what you might term extended productive activity.

Q. You say something here about a string around his wrist. Was there any significance to that?

A. We aren't too clear in our own minds just what the significance of it is except that it is very important to him to have this string around his wrist. I think he thinks of it as some sort of a charm, which he has to wear to ward off some evil influence or something of the sort.

Q. Now, did your staff examine Greenwood again February 4, 1954?

A. Well, on February 4th, we convened a board of examiners at the request of this Court, or that is, in accordance with a directive from this Court. Now, the board of examiners, so comprised of three psychiatrists, one representing the office of Director General of the Public Health Service, one representing the Attorney General of the United States, and a third psychiatrist who represents the Warden of our institutions, and I happened to represent the Surgeon General of the Public Health Service as I had been appointed to serve in that capacity, so I was a member of this board. The other two doctors had not formerly examined this man.

Q. And what conclusions did you reach in that examination?

A. The report reads as follows: "The Board of Examiners concurred unanimously in the opinion that the subject remains psychotic and incompetent. The Board further concurs in the opinion that the subject is chronically ill and that at the present time there appears to be little likelihood of his recovering to the extent that he might be considered competent in the near future."

A. I assume you want me to state my name first. G. Wilse Robinson.

Q. What is your occupation?

A. Physician.

Q. Have you specialized in any field of medicine?

A. Nervous and mental diseases.

Q. Will you tell the Court some of your qualifications for that field?

A. Well, I was superintendent of the State hospital at Nevada, Missouri, from 1907 to 1909. I returned to Kansas City and for one year I was superintendent of the General Hospital of Kansas City, Missouri. Since 1910 I have operated a private hospital here in Kansas City for the treatment of nervous and mental patients. At the present time I am owner and medical director of the Neurological Hospital at 27th and Paseo. I have taken courses in this country and in Europe, in England, Switzerland and Germany, graduate courses in nervous and mental diseases,
63 and also in this country at Johns Hopkins and Fordham University.

Q. All right, Doctor. Now, did you have an occasion on June 28, 1954, to examine Earl P. Greenwood?

A. I did; yes.

Q. That was at the County Jail in Jackson County?

A. Yes.

Q. And you were with Dr. Major; is that correct?

A. Dr. Major and I participated in the examination of Earl P. Greenwood on June 28, 1954 at the County Jail, Jackson County, Missouri.

Q. Will you just tell the Court, then, what you did in examining him, how he appeared, what you discovered, and your conclusions?

A. Well, Greenwood was first told that we were appointed by Judge Ridge to make an examination of him, and we would not make this examination without his permission. He said it would be all right for us to make the examination, agreed for us to make the examination. He was not very cooperative, rather evasive; I asked him about his home, he said it was in Cleveland, Ohio, and about his present location. He said at first he was in a Government Hospital, and later he corrected that and said he was in jail in Jackson County, Missouri.

I asked him why he was in the jail. He said that he
64 robbed a post office, a drug store, and a real estate office. I asked why he robbed the post office, he said he needed money. I asked for what and he said that when he was a boy a spiritualistic woman put a spell on him, and another spiritualistic woman offered to remove that spell if he would buy seven black candles

at $450.00 per each, and this spiritualistic woman was going to burn these candles, he said he didn't know in what order she was going to burn them or how, and remove that spell, that that was the reason he robbed the post office.

Later, however, he admitted that he robbed the post office in order to get money with which to buy drugs. He insisted that he did not steal from the post office. He said he took the money because he needed it, but he did, in answer to my questions, say that he stole the money for the purpose of buying drugs.

The physical examination was practically negative, blood pressure was normal, he had a little tremor of the fingers, which was of no importance, a quite common thing, complained of a little numbness of the right foot. But there was nothing we could ascertain—the pupils of the eyes were dilated and did not respond well to light. I attributed this to his emotional stress and strain, overstimulation of the sympathetic nervous system, which dilates the pupils.

He said he had forged some of the money orders that
65 he stole from the post office and cashed them. He became quite indignant at me because I insisted he answer my questions. I asked him if he knew what a faker was. He said, "Yes, you are a faker." He said his chief occupation had been construction work, that he had done construction work in Leavenworth, Kansas, and in Cleveland, Ohio. He also said that he remained in Kansas City about six months after he robbed the post office.

Q. Doctor, you had the occasion to examine the reports written by the Medical Center while this man was confined down there, did you not, prior to this examination?

A. I examined a vast lot of reports on him, yes. Some stated that he was insane and some stated he was—some doctors that examined him said he was sane.

Q. Now, based upon your examination of this man, what is your conclusion as to whether he is now mentally competent to stand trial?

A. I do not believe Greenwood to be insane.

Q. Do you think he understands——

A. I think he is putting on a show in talking about these black candles. I do not believe it to be a true delusion at all. I do not believe he is insane. I think he knows that he did wrong when he robbed the post office, and I believe he knows the difference between right and wrong.

Q. Do you think he knew the difference between right and
66 wrong in October of 1952 when this——

A. When he robbed the post office, it is my opinion he knew right from wrong, knew he was doing a wrong act, and he

says that he forged some of the money orders afterwards, and cashed them, and spent the money, and I think he knew he was doing a wrongful act when he robbed the post office.

Q. Doctor, do you think he understands the nature of the charge that is pending against him, that is, that he is charged with felonious assault in robbing the post office?

A. I think he understands, yes, why he is in jail. He told me why he was in jail.

Q. Do you think he is capable of consulting his lawyer and helping his lawyer in defending his case?

A. I do, yes, that is, to the degree of his intelligence. He is not very intelligent, never was, that is my opinion, that he never was.

Mr. TAYLOR. I believe that is all.

CROSS EXAMINATION

By Mr. BURRELL:

Q. Doctor, you operate a clinic here in Kansas City, Missouri?

A. Come just a little closer, will you, please?

Q. All right. You operate a clinic here in Kansas City, Missouri?

A. I operate a neurological hospital.

Q. Do you specialize mostly in the treatment of alcoholics?

67 A. No, I do not. I treat very few alcoholics. Most of my patients are nervous and mental patients.

Q. How long did you examine Mr. Greenwood?

A. About one hour.

Q. And in that time you were able to come to these various conclusions that you have stated here today?

A. Yes, I was, that is during that period of time, because I only examined him about one hour, from 9:00 a. m. to 10:00 a. m.

Q. Now, while you were examining him you continued to accuse him, did you not?

A. Accuse him?

Q. Yes.

A. No, I did not accuse him.

Q. You pounded on the table, did you not?

A. I did not.

Q. And you raised your voice——

A. Wasn't any table near me. I was sitting away with my back to the table and he was in front of me.

Q. Didn't you raise your voice and scream at him during the examination?

A. I didn't scream at all. I raised my voice because he did not answer questions readily, he was evasive, he tried to evade answer-

ing questions, and I did raise my voice slightly in order to get him——

Q. You wanted to pull it out of him?

A. Beg pardon?

Q. You wanted to pull it out of him?

68 A. Pull what out of him?

Q. The answers to your questions; you were going to get those answers.

A. I wanted answers to my questions, certainly. That is what I was there for, that purpose. I usually talk loud, I am not a whisperer, I usually talk loud, at all times.

Q. Now, Doctor, I want to ask you one question. You are familiar with schizophrenia as a mental disease?

A. I have treated thousands of them, yes.

Q. Thousands?

A. Yes, thousands in the 38 years I have been practicing medicine.

Q. Now, you talk about narcotics, drugs will give relief to schizophrenics, will they not?

A. Drugs? No, drugs won't give relieve to schizophrenia. The only treatment for schizos that we have ever discovered has been the electro-shock therapy and insulin therapy. Up to the use of those two forms of treatment we had no treatment for schizophrenia.

Q. Isn't one of the symptoms of schizophrenia extreme tension and almost hysteria? Doesn't that come on a man——

A. No, hysteria is not associated with schizophrenia at all.

Q. What about extreme tension?

A. No, there are various kinds of schizophrenia, some of them are so passive they never talk, won't eat unless it is forced

69 upon them, they sit quietly, and inactive. They initiate no activity, one type of schizophrenia, the catatonic type.

Q. There are some types that tension is one of the symptoms?

A. No.

Q. None at all?

A. No, not tension at all. That is a little contrary to schizophrenia. Schizophrenia is a separation of the emotions and the intellect.

Q. Now, you wouldn't want to say that you could make a diagnosis as to whether a man is suffering from schizophrenia by an examination lasting only one hour, would you?

A. I can say I have seen so many mental patients that I can usually determine whether or not a man or woman is mental by an hour's examination and observation.

Q. Wouldn't it be best, though, to get a very careful and proper conclusion, to observe the man from day to day over a period of time?

A. That is not always necessary. It isn't necessary excepting in complicated cases.

Q. But you wouldn't think that you could get a better result if you observed a man?

A. Excepting in complicated cases, because in my experience with thousands of mental patients I have seen I can frequently make a diagnosis by looking at them.

Q. Very quickly, just by looking at them?

A. Just by looking at them I can make a diagnosis as to the type of insanity they have.

70 Q. Now you say his pupils were dilated?

A. Yes.

Q. And that was an indication of extreme emotional stress?

A. Well, no, over-stimulation of the sympathetic nervous system. Of course Greenwood was under some stress while we were making our examination, naturally. Now, if Greenwood had been insane he would not have been under any stress when we were making our examination. He wouldn't have realized what was going on.

Q. He has to be completely—excuse me—in order to be insane then he just has to be completely removed from reality, is that your statement?

A. Oh, no, there are people with insanity, borderline cases, all that sort of thing.

Q. You accused him of being a faker, didn't you?

A. I accused him of being a faker when he was talking about buying seven black candles at $150.00 each.

Q. You just didn't believe that?

A. —to get some spiritualistic woman to burn them for him, because later he admitted to me that he stole the money from the post office for the purpose of using it in buying drugs, so he contradicted himself.

Q. If competent medical doctors have found this man to be suffering from schizophrenia back in December of 1953 and if this man, assuming he had been at the mental institution

71 at Springfield for federal prisoners under treatment for schizophrenia for some 12 or 13 months in 1953 and the early part of 1954, if those were facts, would that have any effect whatsoever with your conclusions here today?

A. It wouldn't change my opinion as to the mental condition of Greenwood, it would not.

Q. Wouldn't change it one iota?

A. No, because in the reports that I saw there are doctors who said he was insane and doctors who said he was not insane, and doctors who said once he was insane and then changed their mind and said he wasn't insane.

Q. Let me ask you this, Doctor, you said that you studied these reports, did you read about the history of this man, his childhood, did you get anything about that in the report?

A. Yes, I read about his history.

Q. What was it?

A. Oh, it was sort of erratic, I don't recall it exactly, my memory does not extend altogether to the details of his childhood history.

Q. You more or less discounted that history?

A. Well, I didn't pay a lot of attention to it. He later was married and worked at occupations, was employed in various occupations, that is, mostly in construction work, as he said. If he had been insane in his childhood or had schizophrenia in his childhood he would not very likely have married and held occupations for which he drew salary.

72 Q. The onset of schizophrenia is usually in a man's twenties or early thirties, isn't that right?

A. I didn't understand you.

Q. I say the onset of schizophrenia is usually in a man's twenties or early thirties?

A. No, it is usually in his teens.

Q. All right, Doctor, did you read about the symptoms that this man was suffering from down at Springfield?

A. Oh, I believe I did, but I have forgotten just what they were.

Q. You don't remember that?

A. I don't remember it.

Q. You never gave that much account in your conclusions?

A. I don't remember exactly what they were.

Q. You knew he had attempted to commit suicide shortly before your examination?

A. I was so informed, yes.

Q. Did you see the long scars on the inside of both of his wrists?

A. Yes, I saw some scars.

Q. You saw that. That is not an evidence of normality, is it?

A. That is not an evidence of insanity. The majority of people who commit suicide are not insane.

Q. So suicidal tendencies are no evidence whatsoever of insanity?

A. It is an evidence of attempt to escape from a disagreeable situation and most people don't — as I say; who are — who at-

73 attempt suicide are not insane. Suicide is an attempt to escape from a disagreeable situation in life.

Q. Well, isn't it a fact that most mental illness is caused by the person's attempt to escape, he can't face life, isn't that the cause of most mental illness or a good part of it?

A. Step a little closer, please.

Q. Isn't that the cause of most mental illness, the desire to escape reality?

A. No, not the cause of most mental illness. It does cause quite a little mental illness, fundamental cause of a great deal of metal illness, but mental illness has a physical basis.

Q. What is the physical basis of mental illness?

A. The principal physical basis of mental illness is insufficient nutrition of the brain.

Q. No way to check that, though, is there?

A. What?

Q. There is no way to check that?

A. Oh, yes, if you catch it in time. Sugar is the principal food of the brain and we have found in our examinations that practically all insane people are deficient in blood sugar. Sugar is a source of energy for the brain and if it is deficient in the blood the brain is undernourished.

Q. Did you read about his symptoms of depression in his history there at Springfield?

A. His depression, yes, I read that he was depressed.

74 Q. Did you give any account to that in your diagnosis?

A. No, millions of people who are not insane are depressed.

Q. What about the confusion in his thought, in the blocking of his thought processes that was referred to in these various reports from time to time?

A. There was no confusion in conversation when I examined him.

Q. You saw also in these reports over a period of some 16 or 17 months that you read, these continual delusions and hallucinations that were referred to?

A. What kind of hallucinations?

Q. Well, did you read the reports?

A. What kind of hallucinations did he have?

Q. Well, I am talking about did your remember them?

A. I don't remember any hallucinations. What kind of hallucinations did he have?

Q. You don't remember anything like that in the report which you read?

A. No, but then what kind did he have?

Mr. BURRELL. Well, that is all, Doctor.

By Mr. Purcell:

Q. Now, will you tell the Court what symptoms you found during that first month that he was at [redacted] hospital, in support of your conclusions regarding his condition?

A. I note here in my record that I stated that the disorder was manifested by tension, depression, preoccupation with suicidal ideas, auditory hallucinations, delusions; markedly impaired insight and judgment, and impaired intellectual functioning. Now, there is material developed in this report, I believe, to support each of those findings, that is, there is descriptive material.

For instance, we know from our previous records on this man that he at one time in 1950, prior to the recognition of this illness, he had an intelligence quotient of 97. When we tested him, we found him to have an intelligence quotient of 68, which certainly indicates markedly impaired intellectual functioning, which we attributed to this disease process and which is rather characteristic of certain types of schizophrenia.

Q. Did his family history given to you lend support to your diagnosis?

A. I don't believe that there is anything in the family history which conclusively supports the diagnosis. There was certain indications in the history of personality informalities in the parents and in several of the siblings, that is, these things often occur in the families of schizophrenics, but they also occur in the families of non-schizophrenics so that they are not conclusive.

Q. Now, what hallucinations did he appear to be suffering from at that time?

A. Greenwood described his hallucinations very graphically. At that time he described them as follows: "Just murmurs, sounds like kids crying, crying, 'Oh, no! Oh, no!' just strange like things. There would be nothing in the room but me. The voices are mostly women, girl babies. It couldn't be good because if it was I wouldn't even think about it. It doesn't come all the time, just at times. People talk about you and moaning." That is quoted from my original report. I should explain, if you will permit me, that when we do elucidate a complaint of hallucinations, we do try to qualify it and find out what the nature of it is, what kind of voices the individual is hearing, whether they are members of his family and that sort of things, and that is the reason this has been gone into in such detail, because we wanted to know just who he was hearing.

Q. You had observed him for over a month, at least a month before this first report was made?

We were also asked at that time to decide or to give an opinion as to whether we felt the defendant was potentially dangerous as specified in the conditions specified in Section 4247 of the law, and if I may summarize, I think our opinion was that he could be considered dangerous in that he might, if released, persist in criminal activities of the same type with which he is presently charged.

Q. But you did not find that he had any fixed delusions concerning wanting to harm any person or group of persons, 90 officials of the government or otherwise?

A. No, Counselor, we did not, and we pointed that out because had we found evidence of such delusions, if he had held fixed ideas that government people wanted to hurt him or if he held ideas that he wanted to hurt the government, either one might have been construed as making him potentially dangerous.

Q. Did you ever notice any tendency the man had toward violence toward any person?

The Court. I don't think the Doctor finished his statement. Had you finished it, Doctor?

A. That is, if he held ideas that he wanted to harm the government or its instrumentalities or perhaps even if we had been able to develop ideas that the government wanted to harm him, we might have felt that there was indication of potential dangerousness, but we found neither.

Q. Now, in order that we might not take too much time, did you on February 9, 1954, find substantially the same symptoms in Greenwood as you had on your previous examinations?

A. Yes. I just note here in reviewing this thing it was essentially the same picture which has been previously described.

Q. Tensions, delusions, confusion and the like?

A. Yes, somewhat as the defendant presently sits in the courtroom, if I may point out.

91 Q. And that you again have occasion to observe Mr. Greenwood after I believe shortly after this February examination he did leave the hospital?

A. Yes. He was released from our institution on April 30, 1954.

Q. And did you have occasion to examine him within the last ten days?

A. Yes, I re-examined him on July 7th and July 8th.

Q. And did anybody else examine him at those times?

A. Yes, two other members of my staff examined him on both those dates and one other member of the staff examined him on the July 8th date.

Q. And who was that that examined him other than yourself?

A. Well, Dr. Norman Graff examined the defendant on July

7th and on July 8th, and Dr. William Philpott examined him on July 8th. Now, it is possible that Dr. Philpott may have also examined him prior to that time, but I have no definite knowledge of it.

Q. Were the examinations of the three of you first conducted independently?

A. Yes, they were. I requested Dr. Graul to examine this man, and then I examined him.

Q. And then the same for Dr. Philpott?

A. Dr. Philpott made his examination with Dr. Graul and I, although I assume that he must have examined this man prior to this group meeting, because of the statements he made when we examined him in the group it appeared that he had already examined him in that capacity.

Q. We are referring to July 8th, a short time ago?

A. Yes.

Q. And did you attempt, the three of you, to reach your independent conclusions before getting together to discuss the matter?

A. Yes, that was the purpose in asking Dr. Graul to examine the man independently. Dr. Graul is one of my senior staff members, so I asked him to examine him independently.

Q. And I believe it is in order—would you state the conclusions that you reached?

A. Well, following our examinations on the 7th and such as may have been made prior to that time by both Dr. Graul and Dr. Philpott are—that is, the resident doctors on the ward where this man resides, so they saw him immediately upon his return to the institution, but at any rate the three of us examined him together on July 8, 1954, and did you want me to read our diagnosis and conclusions?

Q. Yes, if you would.

A. The diagnosis was: "Schizophrenic Reaction, undifferentiated type, chronic, severe, manifested by: tension, depression, confusion in thoughts bloc[illegible] of the thought processes, feelings of inferiority, special preoccupations, delusional ideas of influence, auditory hallucinations, and impaired insight and judgment." And the conclusions were: "In view of these findings the psychiatric staff concurred unanimously in the opinion that the subject remains legally insane by reason of a major mental disorder which would prevent him from having a proper understanding of the proceedings pending against him and which also impairs his ability to properly assist in his own defense. They are further agreed that this subject's prognosis for recovery appears to be poor and that he will probably require indefinite hospitalization to insure his own safety and that of society. The staff does not consider the subject to be potentially

dangerous except to the extent that if released, he might persist in engaging in criminal activities similar to those with which he is presently charged."

Q. Did you find that there had been an apparent attempted suicide by Greenwood between the time that he had left the hospital and this stay?

A. Yes, as a matter of fact when he entered our institution his wrists were still bandaged.

Q. Did you find scars there?

A. Yes. During the course of his stay with us the wounds healed sufficiently so that the bandages were removed and, of course, the scars were then apparent. Long linear scars. If I may comment on that, it is interesting that he made these in-
94 cisions along the length of the arm rather than horizontally, so that they did not strike any — apparently any vessels of importance, which as you talk to him it is apparent that he was so disorganized that he didn't even realize which way he should cut himself, but he definitely has these ideas of wanting to die.

Q. The symptoms in July, that would be in this present month when your examination was made, are substantially the same as those which were found in previous examinations?

A. Essentially the same. We like to think that he is improved over what he was originally, but as we see him capable of going into the same kind of rather profound depression and confusion and agitation, we recognize that he has the kind of illness in which you do see periods of improvement which you might, perhaps misinterpret as something of a more durable nature, but actually they aren't.

Q. Did Dr. Graff who made this report with you on July 8th, had he been rather closely associated with Mr. Greenwood?

A. Very much so.

Q. Had he observed him from day to day and attempted to help him?

A. Yes, I think he had had quite a good relationship with Greenwood.

Q. What would be your opinion, Doctor, as to whether it would be possible to properly diagnose a schizophrenia condition in an hour and twenty minutes? Do you think that could be
95 properly done?

A. Well, I think, Counselor, that the length of time which it takes to make a diagnosis in any given case might vary somewhat. One of the things which, of course, is essential to an examination of this sort is to win the patient's confidence and — well, as we say, to establish rapport with him, and different examiners have different facilities for establishing rapport with different patients. We have remarked that in our own group

examination of Greenwood. He was particularly distressed with questioning by one of the members of your group, and I think I noticed in the record here that he asked him to stop talking because it made him nervous. He said, "Your voice is getting on my nerves."

Q. You think it would be important to get the confidence of the patient before you could make a proper diagnosis of his mental condition?

A. Yes, that is distinctly my feeling, that is, it has been my experience. I do this sort of thing all the time for the federal courts, and I see many cases up which I don't feel that I have the answer in the first hour or even two hours. I feel that I haven't gotten enough material out of the patient to make the diagnosis. Actually it is a matter of getting the patient to verbalize his feelings, and if he is suspicious of you or frightened of your motives, he may very well withhold these very vital things that are
96 troubling him, and if he doesn't tell you then you come away without knowledge of it, and you might presume that it didn't exist when actually it did.

Mr. BURNETT. Thank you very much, Doctor.

CROSS EXAMINATION

By Mr. TAYLOR:

Q. Dr. Smith, did this man ever tell you the purpose in his executing this robbery was to secure money to buy narcotics? Did he ever use that as an explanation?

A. I have no recollection on that. I think it would be necessary for me to go through this report of mine. Perhaps you noticed something in my report which indicates that?

Q. No, not in your report, rather in another statement taken from him. What I was wondering about, you say he is not what you would consider to be a narcotic addict?

A. No, certainly not an addict, because we have kept this man for—how many months did we have him? He never had any.

Q. There were no symptoms of withdrawal?

A. To begin with he had no symptoms of narcotic addiction when we got him originally nor did he make any unusual demands for narcotics during the time we had him. I mean he was perfectly tractable and with the management which we gave him. Now, we do have individuals, we have no active addicts in our institution, ordinarily they are withdrawn at one of the
97 narcotic institutions prior to coming to us, but these addicts whom we do—that is, who have been withdrawn who come to us, make persistent demands for narcotics and various uses of physical illness to get it. That didn't apply in this man's case.

Q. Doctor, his explanation to you for committing the robbery was that he wanted to secure money to go to Baton Rouge to buy some black candles. Now, would the fact that he, instead of going to Baton Rouge after committing these robberies, rather he went to Chicago and Cleveland, would that give any indication of whether that was a time delusion or whether it might be something which he thought of later?

A. No. I noticed myself the rather circuitous route which this man was following to his goal. My interpretation is it was just his general disorganization and his ambivalence, which is also a part of this picture. He is so confused—there are times when he thinks he is all right, when he thinks this spell isn't on him. Now, these periods, I don't know what their duration is, but I suspect that some of them are very short-lived and during such a period he might have a feeling of temporary elation and might feel quite well and might say, "Well, I don't have to go, I will do something else instead." But the recurring theme comes back to this rather terrifying experience which he is having, one which is—well, it is an extremely frightening thing, I am sure, if you try and visualize a man who keeps thinking something is influencing him and that he must get this influence off of him.

Q. Now, referring to the examination which was made in February of 1951, about how long did you and the other doctors meet at that time when you were examining the patient?

A. Let me see——

Q. February 4th was the date of the report, I don't know the date of the meeting.

A. February 4th. Well, that is the date of the meeting. I don't recall the exact period of time that was taken for that examination, but I would say that it was something between an hour and two. That is about the best I can say.

Q. Something between one hour and two hours. Then I believe you said that Dr. Rinck and Dr. Sartin had not previously examined the man, is that correct?

A. That is so.

Q. So the fact that the other two doctors who were here and testified took only one hour or an hour and twenty minutes would not necessarily be any reflection on the findings they made?

A. No. No, I think that this particular examination, the doctors who had not examined him, did have the benefit of my knowing how to bring out this man's delusional illness and ideas.

Q. Well, would the fact that these other two doctors, Dr. Robinson and Dr. Major, had the benefit of these same reports which you submitted to the Court, they were made available to them, that would have been of some benefit to them?

A. Only if they accepted them be valid and I must say apparently they made up their minds that they weren't.

Q. Well, we don't know when they decided that.

A. So I can't say. I mean generally if personality type heavily on the findings of my colleagues.

Q. Certainly.

A. And I don't — well, they are the last thing that I throw away. For instance, You might say this man originally came to us as having been examined by another psychiatrist and declared insane and we don't always concur with the findings of others, but we hope that we give enough observation and study to be certain.

Q. Have any members of the psychiatric staff at the Medical Center ever felt that he was sane, any persons who have examined him down there?

A. No, not to my knowledge. I know of no one that has ever felt that he was sane at any time during his stay there.

Q. Would it be possible, Doctor, for — let's see, this man left your institution about the 30th day of April. I presume that you people still thought he was insane at that time, is that correct?

A. Yes.

Q. And about a week later, May 5th or 6th, from there until about the 13th he was examined up in Cleveland by a Dr. Grossman. You are familiar with the fact that he examined him previously about a year prior to that?

A. Yes.

Q. Would it be possible that Dr. Grossman, assuming that he was a qualified psychiatrist and that he examined him properly, that he could conclude he was sane?

A. I believe it to be possible.

Q. Could you explain how that could happen?

A. Well, I think for one thing, it has been long observed that changes in environment will significantly change the reactions of schizophrenic individuals. Dr. John C. Whitehorn, who was, I suppose, one of our most eminent psychiatrists today, who is associated with the Johns Hopkins University, wrote on that many years ago on the — I just can't think of the word I am trying to use, but on the favorable influence which changes in environment have on some of these mental disorders. However, these are only temporary. I have seen this in my experience, Counselor. I have seen men who are sent to me on an admitting service in a hospital where these patients usually come who had been described as being as nearly totally mad as anyone could be, who had perhaps traveled several hundred miles. For instance, I recall distinctly the case of a young navy man who had been described — who had gone berserk, but when he arrived on my admitting service, he looked

quite good, and the best you could say about him was that he was a little eccentric perhaps, as we say a little schizoid but not psychotic. However, within a period of time we saw the same manifestations which been previously described and the only way to account for that that I know of is the effect that the trip had on the man.

Q. You don't think that this man is capable then of putting on an act to try to convince you people that he was insane?

A. No. No, Counselor, I see no——

Q. Do you think that on the other hand—let me ask the reverse. He knew when he was going up to Cleveland that there was a possibility that he might be released up there, did he not?

A. He doesn't want to be released, he wanted to stay in that hospital. He told me he liked that hospital.

Q. He told you that. Well, would it be possible that he could have attempted, though, if we assume that he wanted to be released, that he attempted to convince those doctors up there that he was sane, that not only was he helped by the trip but that he himself tried to show better manifestations to those doctors?

A. Well, that question—that is a rather difficult hypothetical question to answer.

Q. Well, not whether he did but whether you think he is capable of that.

A. No, I would say no, I don't think he would.

The Court. You don't think he would be capable of that?

The Witness. No, I think he is too disorganized to make—say such elaborate plans. I think that has been evident in the whole pattern of his behavior. I should point out this man has always insisted he is sane. It is a matter of habit. One of the first things I do with a man when I examine him is to take a statement as to how he regards himself, whether he thinks he is sane or not, and I have reasons for doing that. But this man said that he thinks he is quite sane, he always did, and he said the doctors are trying to say he is crazy, which he has apparently always said.

Q. Now, you say that you have to gain the confidence of these individuals before you can really handle them or before you can really learn anything about them. Would your failure to gain their confidence be likely to result in the conclusion that they were sane, rather than insane?

A. Well, it would depend a lot on your personal orientation. In other words, if you asked a man questions and he becomes antagonistic toward you, you might conceivably interpret that as evasiveness on his part.

Q. But it is a matter of interpretation?

A. What is right, it is a matter of interpretation. It may simply be the result of his confusion and fear in the situation in which he finds himself. It is important to try and make as objective an evaluation as you can as to the credibility of the man whom you are examining.

Q. I think we should ask this question. It has been gone into to some extent, but would you care to elaborate in any way on your statements previously made as to his dangerousness to the interest of the officers, property and other interests of the Government, in case he should be released?

A. Well, I don't think that I can elaborate much beyond what I have already said, that I think there is a distinct possibility that the man might continue to engage in some kind of criminal activities. It is very possible that he will do the same thing that he has done. I would like to think that he wouldn't, because I would like to think that he has enough insight within this illness of his to appreciate the trouble and complications that this has caused. But my best judgment would say that he might very well go and do the same thing over again, and to that extent obviously he would be a danger. Anyone that tries to break into a post office is certainly going to be a danger.

Q. Now, of course, I know what you probably won't care to say that he is either permanently or temporarily insane, but would you tell us as nearly as you can whether you consider him to be permanently insane?

A. Well, as you say, Mr. Taylor, it is difficult to answer this permanent and temporary question, because actually we

104 have no criteria——

Q. I think the lawyers and the psychiatrists have difficulty in establishing this rapport you were talking about a few minutes ago, isn't that correct, we can't get together on the meaning of the terms, but we do have that problem and I am sure the Court would like to know as closely as possible whether he is permanently insane.

A. Well, I think the best that we can say is that this man has had this disorder now for—well, we know that it existed in December of 1957. He has had it since then. I suspect that it existed sometime prior to that. You will note that when I first saw this man I diagnosed him as being an acute disorder. I did that on the basis of the fact that he had been seen only a few months before and apparently that was near the onset of the condition. Anything that is within six to nine months we would class as acute. I now class him as chronic because the illness has certainly existed longer than anything that you would call acute. Now, an illness that has persisted this long without any essential change in

it as this man's illness is, in spite of what treatment we have had available to give him, falls into the group of illnesses with poor prognosis. The likelihood of recovery is poor. Even if he does recover or make a remission, as we say, from what we know about the disease itself, it is a chronic disorder which has a tendency to develop relapses and remissions and as time goes on the periods of relapse become longer and the periods of remission become shorter; that is, in the term of duration this may be, so that the likelihood of his having any sustained improvement is small. I would say, I say that such improvement would be measured in terms of his ability to make an adequate social adjustment. That is, a social adjustment consistent with his previous standing in the community which was a laborer, which isn't asking too much.

Q. You are familiar with the fact that steps in its were made back in the spring of this year to get him transferred to the state authorities of Ohio, and that they, after examination, concluded that he was sane. Is it likely that they would again accept him? Even suppose we wrote to them and asked if they would accept him, is it likely that they would consent to have him sent back there?

A. Well, I am not sure that—

Q. I know that you can't answer that yes or no, but I thought from your dealings in this sort of thing you might have some idea for the Court.

A. I don't recall that the file on this case reflects that we have had any great difficulty as we have in some other cases, in getting these people to accept this case, as the States vary, but it is my impression that after this man's residence was established that the thing went along rather smoothly, I believe, so that I suppose the same would transpire again. It is also possible that he may appear improved again when he gets there.

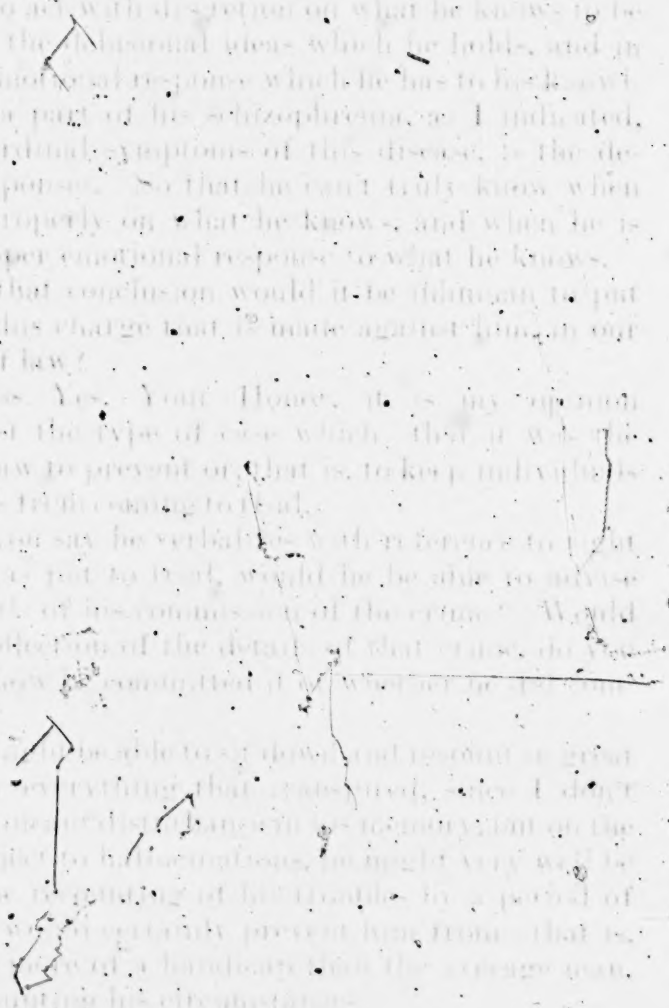
Mr. TAYLOR: I believe that is all.

The COURT: Does this man have any sense of moral values?

The WITNESS. Yes, Your Honor, I think very definitely he does. It is my belief and my experience that all men, regardless of how ill they may be, have some sense of moral values.

The COURT. Does that sense of moral values distinguish to him between right and wrong from a legal standpoint of knowing the extent of the act that he is performing at a particular time?

The WITNESS. Well, as I indicated, Your Honor, in my original report, I was impressed at that time that if you asked this man his concepts as to the rightfulness or wrongfulness of the act which he had been alleged to have committed, he correctly, I think, verbalized correctly the answer to that question. He stated without any hesitation, as I recall, that what he had done was wrong.



The WITNESS. Your Honor, in checking the record here the only thing I find available is what is classed as, I think they term it, a statement of military service, which indicates that he entered the Army on the 20th of February, 1941, and was separated with an honorable discharge on the 31st of March, 1945, and the cause of separation is listed as not adaptable for military service. It further states that no record has been found to show that he was convicted by a court martial during the period of his military service, and I don't know of anything else on that.

The COURT. That being so, that he was honorably discharged from military service, as a veteran he would be subject to receiving treatment from the Veterans Administration?

The WITNESS. That is so.

The COURT. This Court is confronted with this proposition, either putting this man to trial on this charge, and submitting the question of his sanity or insanity to the jury as to whether or not he knew right from wrong at the time of the commission of the act. Since he was originaly committed to your institution in February of 1953, and you had him, I think, for a period of approximately 10, 11, or 12 months, and you found as you reported to the Court in your report of April 6, 1953, found him incapable of understanding the nature of the charge pending against him, and so mentally confused and depressed that he would be unable to cooperate with counsel in his defense. That was brought to my attention. You then made another report to the Court in February 1954, and turned him over to the authorities of the State of Ohio. They saw fit to keep him only a short period of time in their mental institution and have turned him back to us now. You say that this man needs, for his own protection, medical attention?

The WITNESS. Yes, sir.

The COURT. Have you had any experience since you have been on the staff of the Medical Center of turning these men over to the Veterans Administration where other States won't accept them?

The WITNESS. Your Honor, we have transferred patients to several hospitals, at least a few, to Veterans hospitals. It is my impression that they won't take a man in the Veterans hospital on which there are charges outstanding against him, and in some of the cases we have sent, I believe that they have remained for adequate treatment. One of the factors which complicates this whole thing is that as you probably know the hospitals every day are releasing men of this type, that is, they are running them out on the streets, presumably, at least, with responsible relatives, that sort

of thing. So that there are certainly many schizophrenics on the streets, whose illness is of the same severity as the defendant's here, perhaps, so that there is a great pressure on their part apparently to push those well loose to make room for men that they conceive is worse.

The COURT. What are the courts going to do about it?

The WITNESS. I wish I knew. Actually we have a statute implemented without much to do it with. I think that is the difficulty.

The COURT. The man is committed to the jurisdiction of the Attorney General and he is confined to the Medical Center until such time as the charge against him is disposed of or until he is capable of standing trial or there are suitable arrangements made for him in the State of his residence, and the State of his residence won't take him. What is this man's situation?

The WITNESS. Well, I think that the State of this man's residence will take him.

The COURT. You think that there is a possibility of your staff working it out with the staff of the State hospital so that they will re-receive him?

The WITNESS. Well, isn't it more or less mandatory that they do so or can they say no? I just don't know the answer to that.

The COURT. It is not mandatory. If it was we would turn him over to them right now. No, there is nothing mandatory about it. It is a question of their voluntarily accepting him.

The WITNESS. I see.

The COURT. This is an adjudication of insanity in the State of his residence. Is there anything else you want to add, Doctor?

The WITNESS. No, Your Honor.

The COURT. As I understand, it is agreeable to include in this record the reports of Dr. Smith as he made individually, and as the staff?

Mr. BURNETT. That is agreed to.

Mr. TAYLOR. Yes, Your Honor.

The COURT. There are three of them there.

The WITNESS. Your Honor, I have another report which was not available. I brought this along with me, this is the most recent one. I don't think you have this one. I cited that one in the testimony, but I don't think that you have it.

The COURT. Let's see if I have all of your reports, the ones in our file so far are the report of February 8, 1953—is that the first one?

The WITNESS. Yes.

The COURT. That seems to be your report, Doctor. Is that your first report?

The WITNESS. Yes. April 5, 1950.

The COURT. Then we have a report of January 26, 1950?

The WITNESS. Yes, Your Honor.

The COURT. Then I have a report of February 4, 1950?

The WITNESS. Yes, sir.

The COURT. And this report.

The WITNESS. Yes, Your Honor. This is the most recent one.

The COURT. This is your fourth report?

The WITNESS. Yes.

The COURT. Mark these in the order in which they are as exhibits in this case.

(Court's Exhibit 1 to 4, inclusive, were marked for identification.)

The COURT. Is there anything further, Gentlemen?

Mr. BURGETT. I think not.

Mr. TAYLOR. Your Honor, I don't know if the gentlemen has anything with respect to the proceedings in Cleveland this last fall. If not, Your Honor might wish to, if there is no objection, to have this letter which Dr. Grossman wrote to the United States Attorney in Cleveland that was forwarded to us, particularly with respect to whether you might want to consider this with respect to whether he could be transferred back there again or whether other arrangements are available.

The COURT. Let that be marked Exhibit 5.

Is there any objection?

Mr. TAYLOR. You have seen a copy?

Mr. BURGETT. I have a copy, of course we don't have any opportunity to question him at all about his conclusions. I don't think it should be given any

The COURT. It will be received by the Court for the limited purpose with reference to the future custody of this man.

Marked Exhibit 5.

(Court's Exhibit 5 was received in evidence.)

The COURT. Is there anything further?

Mr. TAYLOR. I certainly have no argument, Your Honor.

The COURT. The Court will take a finding of fact in this case at a later date. Let the matter be taken under advisement at this time.

(And the foregoing were all of the proceedings had and entered of record in said cause.)

child. In replies to questions concerning his education he replied, "I think I went around the tenth grade. I am not sure." He states that he went to a special trade school most of the time. He indicates that he had difficulty with arithmetic and spelling in school. He states, "I didn't do so good. Teachers told me I was good in English." Greenwood admits that he was frequently truant from school and that around the age of twelve or thirteen he was placed in the Hudson Boys Farm because of truancy. Following this he ran away from home and was apprehended in New York State and was placed in Childrens' Village, Dobbs Ferry, New York and later he was returned to his home in Cleveland.

Greenwood states that he enlisted in the Army, February 20, 1941, at the age of seventeen. He states that he falsified his age, claiming himself to be eighteen. He spent some time in Arizona and was assigned to Company M, of the 368th Infantry, 93rd Division. He also claims to have seen service in Mexico. He states that while in the service he, "Got sick and swelled up." Following this he was discharged from the service. The records show that he received an honorable discharge on the 31st of March, 1943, under provisions relating to servicemen who had been classified as "Limited Service."

After leaving the service, Greenwood returned to his home in Cleveland where he worked as a laborer on construction projects. In 1945, he was arrested for robbery, and a short time after that for assault. In 1946, he received a one to twenty-year sentence to the Mansfield State Reformatory, Mansfield, Ohio, on a forgery charge. He was released from this institution in October, 1951. He states that he returned to Cleveland, Ohio, where he went to work as a porter for a Studebaker Agency and claims that he earned about seventy dollars a week. He states that after about two months employment on this job he was discharged because, "I came out of Leavenworth." Following this he states that he hobboed to Chicago. From there he went to Kansas City, because, "I didn't like Chicago." During this period he claims to have had employment as a section hand on the railroad and later as a laborer on a construction project. He states, "I was doing okay for a while and then I started worrying again."

Greenwood states that he was married in 1948. He indicates that his marriage ended in divorce and that he only lived with his wife a few months. There were no children by this marriage. In this connection Greenwood states, "She couldn't have no children." When asked why his marriage failed he replied, "We just didn't get along."

In 1949, Greenwood states that he began living with a woman named "Ruby" in Cleveland, Ohio. He states that this woman is

younger than he and that he has one child who is almost three years old by this liaison. When asked why he did not marry this woman he replied, "Never had nothing to get married on." Greenwood is somewhat evasive concerning his relationship with this woman stating, "She said she liked me." You know how women are, your never can tell." According to him this woman is employed as a seamstress and is self-supporting. Greenwood states that he had not been living with this woman for sometime prior to the instant offense because, "She didn't like me to take drugs. I guess that is what we fell out about."

Greenwood admits having used narcotics for sometime. However, he claims that he is not addicted. He states that narcotics are, "A gift of God to mankind to relieve him of worries." "That's the only time I don't be bothered, when I got my drugs with me." Greenwood insists that he took narcotics in order to relieve himself from the emotional tension which he was under. This will be described in detail at a later point in this report.

In the instant offense Greenwood freely admits that he held up the Post Office in Kansas City. From there he went to Leavenworth and then later to Chicago. From Chicago he went to Cleveland where he held up another Post Office. The record shows that as a result of psychiatric examination made of the subject at Cleveland, no prosecution was had and he was returned to Kansas City to face charges on the instant offense. The report of the psychiatric examination dated January 3, 1953, prepared by Dr. Royal G. Grossman, [redacted] the following opinion: "In our opinion this man is mentally ill and should be treated in a mental hospital."

V. Neurological examination: The significant findings at neurological examination were: Fine tremor of the outstretched fingers of both hands; impaired sensation to vibration in the right foot extending up above the ankle. Cranial nerves were essentially intact. Pupils were round, regular and equal and react to light and accommodation. The fundi were physiological. Deep tendon reflexes were present and equal throughout. No pathological reflexes were elicited.

VI. Mental status examination: On the ward Greenwood has been observed to be tense, depressed, and confused. He has frequently complained bitterly about auditory hallucinations. He tends to be collusive and takes little interest in the ward activities. So far he has been eating well and his sleep has been satisfactory. He generally keeps himself neat in appearance and maintains his quarters in a satisfactory manner.

At examination, Greenwood is observed to be tense and tremulous. For the most part he sits with his head bowed and fre-

quently during the interview he became tearful. He stated, "Most of the time, I'd just rather be by myself." In this connection, he revealed that he thinks people are watching him to see, "How I act and what I say. People stare at me in stores like I'm going to steal something." Although lacking in spontaneity, Greenwood's speech is generally relevant and coherent. Greenwood's mood is predominately one of depression. He states, "How you going to be glad to be alive when you see bad things. It would be better if you never was born. It would be better if you never was born if you continue like this." Greenwood freely admits preoccupation with self-destructive ideas. He states that he tried to hang himself, "A long time ago," and that now, "I just wish I wasn't alive, to tell the truth about it."

Greenwood's main complaints seem to revolve around his auditory hallucinations. When asked to describe what he hears he replied, "Just various sounds like kids crying. Oh, no! Oh no! Just strange like things. There would be nothing in the room but me. The voices are mostly women, girl babies. It couldn't be good cause if it was I wouldn't even think about it, it don't come all the time, just at times. People talk about you and moaning." As has been indicated earlier, Greenwood claims to have obtained some relief from his hallucinatory experiences by taking narcotics.

Greenwood's ideas concerning the origin of his hallucinations appear delusional. He blames all of his present difficulties on an incident which occured prior to his entry into the army when he was living in a rooming house in Cleveland, Ohio. He states that there was a woman living in this house who was a tea leaf reader and that she, "Put some kind of a spell on me." He states further, "One night I got off from work and went downtown, came back home, listened to the radio. It seemed like I was falling all over the bed and people were screaming." Greenwood states that he told his girl friend, "Ruby" about the voices and that she, "Went to see a spiritualist for me." He states that his girl friend thought that he should go and see this spiritualist instead of taking drugs and that when he continued to take drugs, this lead to a falling out between he and Ruby.

Greenwood states further that, "Aunt Olivia told me to get out of the spell by going to Baton Rouge and burning black candles." It is of interest to note that in discussing the instant offense Greenwood made the following statement, "I just made up my mind to get me some money to go on down to Baton Rouge to get the candles to take this spell off. I don't believe it is a spell but just in case it is, I'd be sure." Thus, Greenwood states that his reason

for committing the instant offense was in order to raise money to get to Baton Rouge to have the "spell" taken off.

Greenwood is oriented in all spheres. His memory for both remote and recent events appears to be satisfactory. His fund of general information is somewhat limited. He indicates that he feels that his physical health is satisfactory. Clinically, he appears to be of dull normal intelligence. In this connection it should be noted that psychological testing done in 1950 revealed him to have an I. Q. of 97. The recent psychological examination on this man revealed him to have an I. Q. of 68-149 on the Wechsler-Bellevue Test. It is our feeling that at the present time the patient is functioning below his potential intellectual capacity as a result of his serious mental disturbance.

Greenwood has no real insight into his disordered thinking. He obviously does not appreciate the fact that he is severely mentally ill. It is further apparent that his judgment is markedly impaired.

VII. Summary: In summary we are dealing with a thirty-year-old colored male of apparently dull normal intelligence whose early life was marred by discension between his parents. According to him, his father mistreated his mother and from the records we find that his father left his mother when Greenwood was a small child and his father apparently refused to contribute towards the support of his family. It is further noted that Greenwood's mother was a moody, emotionally disturbed person who in recent years has been in poor health. The patient did poorly in school and was frequently truant. As early as twelve or thirteen he began to show nomadic trends, running away from home and by the time he was seventeen he enlisted in the Army. The records indicate that he made a satisfactory adjustment in the Army on a limited service status, receiving an honorable discharge in 1943, after about two and one-half years' service. In 1943, Greenwood made a short-lived, unsuccessful marriage which terminated in divorce. His employment history is limited to laboring work. Since 1945, he has had a number of arrests including a two-year sentence to Leavenworth, commencing in 1950 for using and selling narcotics. Since his release from Leavenworth in 1952, Greenwood's record suggests that he has been restless and nomadic. According to his history he has been emotionally ill, troubled by depression, auditory hallucinations, and feelings that people were watching him. Believing himself to be under some sort of a "spell," and having been told by an Aunt that he could be relieved from this spell by burning some black candles in Baton Rouge,

psychiatric examination under provisions of Section 4244 of Public Law 773. He had been previously adjudged incompetent in the Federal Court in Cleveland, Ohio, where he was being tried on a similar charge of Post Office Robbery. In the Report of Examination prepared at this institution by Dr. C. E. Smith, dated April 8, 1953, subject was diagnosed as having a schizophrenic reaction, undifferentiated type, acute. It was noted that the subject had an I. Q. of 68. This report reflected the examiner's opinion that the subject was legally insane by reason of inability to understand the nature and the quality of the charges pending against him and inability to assist properly with his defense.

Subsequently, the Court raised the question as to whether or not this subject's insanity was permanent or temporary. The Court was advised that this question could not be resolved without giving the subject appropriate treatment in view of the possibility that he might improve sufficiently to be able to stand trial if he were given treatment. On November 16, 1953, Judge Reeves modified the original commitment order in this case to the extent that he authorized that such treatment as deemed necessary to determine that whether or not this condition was permanent or temporary be given to this defendant.

Following this the Psychiatric Staff took cognizance of a letter dated November 17, 1953, from the United States Attorney in which the following statement appears: "Judge Reeves has indicated that in the event that this defendant is found to be so incompetent that it is not likely that prosecution can be had within any reasonable time, efforts should be made to release him to the authorities in his own state." The Staff studied this case further and on January 14, 1954, the case was reviewed and the following recommendation was made: "The Neuropsychiatric Staff agreed unanimously that the patient remained psychotic and incompetent. The Staff agreed that the patient's illness is chronic, of long standing, and that the prognosis for recovery is poor. The Staff recommends that the committing court be advised that our findings indicate that it is unlikely that this subject will regain his sanity in the near future. Therefore the Neuropsychiatric Staff recommends that consideration be given to transferring this subject to a state hospital in his state of residence."

This case was reviewed this date (2-4-54) by the Board of Examiners in accordance with an order from Judge Albert A. Ridge, dated February 2, 1954, which directs that the Director and the Board of Examiners at the Medical Center for Federal

funds, he went out and held up some Post Offices in an effort to get the money to make the trip, thus committing the instant offense.

The present psychiatric examination reveals the subject to have a psychotic disorder manifested by, tension, depression, preoccupation with suicidal ideas, auditory hallucinations, delusions, markedly impaired insight and judgment and impaired intellectual functioning.

VIII. Diagnosis: 000-x25—Schizophrenic Reaction, undifferentiated type, Acute.

IX. Recommendations: It is the examiner's opinion that this subject is legally insane. Although he correctly verbalizes the *difference between right and wrong*, he is unable to properly choose between, because he is motivated by insane delusions. In addition, his delusional thinking renders him unable to properly understand the nature of the charges pending against him and his mental confusion and depression interfere with his ability to cooperate with counsel in this defense.

C. E. Smith,
C. E. Smith, M. D.,
Medical Director, USPHS,
Chief, Psychiatric Service.

CES:roh

120

Classification Form 2
Rev. January 1939

MEDICAL CENTER FOR FEDERAL PRISONERS
Springfield, Missouri.

SPECIAL PROGRESS REPORT

Committed name: Greenwood, Earl P. Reg. No. 0-42-H Date: 1-26-54

Report of Neuropsychiatric Staff Meeting: 4-14-54
Legal Residence: Cleveland, Ohio

The patient is a 31 year old negro male whose case was reviewed by the Neuropsychiatric Staff for the purpose of consideration of his present mental status, his prognosis, and recommendations for disposition. Please refer to the Report of Neuropsychiatric Examination dated April 8, 1953, for details of pre-morbid and present illness.

For several months following this patient's admission it was necessary that he be housed on the unit for disturbed psychotic patients. He frequently displayed inappropriate affect, showed evidences of depression, episodic outbursts of anger and hostility directed towards personnel who were incorporated in a vague delusional system and accused of persecuting the patient. This was apparently in response to auditory and visal hallucinations. Approximately four months ago the patient showed evidences of stabilization of his mood, and was possible to transfer him to a more improved unit. He has been attending occupational therapy, where, although he remained seclusive, he gradually formed a fairly close relationship to the therapist. He has been interested in playing "bongo drums" but has not participated in any O. T. projects other than this. He has responded well to continuous flow tubs in hydro-therapy and minimal amounts of chemical sedation when indicated. The patient states, "I'm not as troubled as I used to be. I'm able to sleep at night." His behavior has likewise showed his response to improvement. There are no longer the aggressive outbursts toward personnel or other inmates. Although the patient remains quite suspicious of the motives of other inmates and personnel, nevertheless, he has been able to control his impulses.

At the time of this examination the patient was wearing a shoestring around his left wrist to which he attributed magical power referring to it as, "an Indian prayer string." The patient complains that, "My left hand can't carry any more. All the strength has gone out of it." By this the patient means that he is no longer able to drum in rhythm with his left hand, as he did formerly. It is noted in the history that the patient has always been extremely superstitious. The patient also stated that he believed that he could not be helped beyond this point and that it did not matter to him as to what was going to be done with him. His affect was inappropriate and he frequently would let his head drop and gaze at his wrist and appeared pre-occupied when being questioned, playing idly with the string around his wrist.

Diagnosis: Schizophrenic Reaction, undifferentiated type.

121 Recommendation: The Neuropsychiatric Staff agreed unanimously that the patient remained psychotic, and incompetent. The Staff agreed that the patient's illness is chronic, of long-standing and that the prognosis for recovery is poor. The Staff recommends that the committing court be advised that our finding indicates that it is unlikely that this subject will regain his sanity in the near future. Therefore the Neuropsychiatric Staff

recommends that consideration be given to transferring this subject to a state hospital in his state of residence.

For the Neuropsychiatric Staff:

Norman L. Graff
NORMAN L. GRAFF, M. D.,
Assistant Surgeon (R), USPHS,
Staff Psychiatrist.

Stanley M. Kemler
STANLEY M. KEMLER, M. D.,
Sr. Assistant Surgeon (R), USPHS,
Staff Psychiatrist.

C. E. Smith
C. E. SMITH, M. D.,
Medical Director, USPHS
Chief, Psychiatric Service.

NIG: rcm: dmt:
D: 1-18-54
T: 1-19-54
S: 1-20-54

Committee recommendation: The classification committee recommended that the Court be advised on the N. P. Staff recommendation.

January 26, 1954.

122 *Exhibit 3*

Classification Form 2
Rev. January 1939

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
MEDICAL CENTER FOR FEDERAL PRISONERS
Springfield, Mo.
SPECIAL PROGRESS REPORT

Committed Name: Greenwood, Earl P.
Reg. No. O-42-H Date

Report of Board of Examiners: 2-4-54
Legal Residence: Transient (Born in Cleveland, Ohio)

This 32-year old colored male who has been charged with Post Office Robbery in the Federal Court in the Western District of Missouri, was received at this institution March 7, 1953, for

Prisoners "should certify to the court their 'judgment' concerning the above proposition," namely, "it now having been determined that defendant is so mentally defective that he [sic] will probably never be able to stand trial on the charge pending against him in this court, a further hearing must be held which will resolve the power to commit the defendant as mentally defective under the conditions specified in Section 4247, Title 18, United States Code, ie, whether if defendant is released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the defendant are not otherwise available."

At examination by the Board of Examiners this date, subject is observed to be tense, anxious, and depressed. For the most part he sits with his head bowed. Subject stated that he would rather be dead than, "go on like this." He is markedly preoccupied with delusional ideas of having been influenced by some sort of spell which has been put upon him. He is markedly confused. He is lacking in insight and his judgment is obviously markedly impaired. On questioning, the subject disclaims any ideas of wanting to harm anyone. It is noted from the records that the subject has not shown any assaultive or destructive trends while he has been under observation here.

Findings and Recommendations: The Board of Examiners concurred unanimously in the opinion that the subject remains psychotic and incompetent. The Board further concurs in the opinion that the subject is chronically ill and that at the present time there appears to be little likelihood of his recovering to the extent that he might be considered competent in the near future.

The Board considered at length the question of this defendant's potential dangerousness under the conditions specified in Section 4247. The Board agreed that this subject might be considered potentially dangerous to the extent that if released he might conceivably persist in criminal activities of the type with which he is presently charged. In considering this man's mental illness the Board finds that he does not hold any fixed delusions concerning wanting to harm any person or group of persons, either officials of the government or otherwise, so that in this respect he probably would not constitute a danger to the safety of officers, property, or other interests of the United States. The Board notes further that at the present time efforts are being made to arrange custody and care of this defendant in a state hospital. The Board further recommends that this subject be considered a suitable candidate for state hospital care if suitable arrangements can be made.

124 For the Board of Examiners:

E. Smith.
C. E. SMITH, M. D.
Medical Director, USPHS
Representing the Surgeon General, USPHS

E. C. Rinck.
E. C. RINCK, M. D.
Medical Director, USPHS
Representing the Warden

J. M. Smith, M. D.
J. M. SMITH, M. D.
Representing the Attorney General

CES:rdh
2-4-54 D:
2-5-54 T:S

125 *Exhibit 4*

Classification Form 2
Rev. January 1939

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
MEDICAL CENTER FOR FEDERAL PRISONERS
Springfield, Mo.

SPECIAL PROGRESS REPORT

Committed name: Greenwood, Earl P.
Reg. No. O-42-H Date: July 1954

Report of Neuropsychiatric Staff Meeting—July 8, 1954

The psychiatric staff reviewed the history and findings in the case of this individual who was originally committed here for psychiatric examination under provision of Section 4244 of Public Law 285. This subject was originally examined at this institution by Dr. C. E. Smith, Chief of the Psychiatric Service, who diagnosed the subject as a schizophrenic reaction, undifferentiated type, acute, and concluded that the subject was legally insane. Subject was recently returned to this institution for re-examination after he had been found to be sane by psychiatrists who examined him in Cleveland, Ohio.

On examination by the psychiatric staff this date the subject was observed to be fairly neat in appearance. He continued to wear some kind of cord wrapped around his left wrist which he indicates is a kind of charm to ward off some evil influences which are operating on him. It is also observed that subject bears long linear scars on both wrists which resulted from an abortive sui-

cidal attempt which the subject states he made while he was being held in the Checkhist jail. Subject states that he got himself something after he heard that he was to be tried and sentenced for this particular because I was just tired of traveling. I was in a crosslock eight man cell. I was left, and I just gave up".

During examination the subject was observed to be markedly tense and he often became tearful and depressed. He stated, "Maybe the grave is the end of it. It would be a rest. I wouldn't have to continue to wonder". On one occasion during the examination the subject became very disturbed and stated to one of the examiners "Your voice is getting on my nerves". Throughout the examination there was evidence of confusion in the subject's thought processes as well as blocking of his thought processes.

Subject continued to verbalize the delusional ideas which he had expressed at previous examinations at this institution. He indicates that he feels himself to be under some kind of a spell which was put on him by a "Spiritualistic woman" and he also indicates that he feels himself to be subject to some kind of supernatural forces. In this connection he insists that he committed the instant offense in order to get money to go to Louisiana to have the "Spell" lifted. He stated "I stand in fear of it (the spell) start happening again like I was before, getting confused, not having any real rest or real peace of mind". He stated further "I get the damndest imaginations. It feels like somebody creeping up on me, like feet crunching on gravel or sand or on snow. It's a weird sound. I know I'm disturbed, that's all. It wakes me up all the time. It seems like somebody after me".

Subject revealed that he continued to hear auditory hallucinations. He states that the voices have told him "My prayers are in the dust". In describing the hallucinations he stated that it sounds like "Kids hollering and playing. Like kids rolling hoops. Sounds like a kid crying for something or maybe lost".

When the subject was questioned as to what his plans would be if he were released he stated "I don't think I am ready to go on the streets. I don't know what I'd do. I guess I'd try to play my drums again. Following this the subject broke down into tears and began biting his nails. On further questioning concerning whether or not he felt himself to be well, subject stated, "I think I do need some help. I never admitted it to nobody. I thought it was more than anyone could do. I need help so I can think straight". Subject then indicated that he feels himself subject to some kind of supernatural forces which are beyond anyone's help. Subject indicated some ambivalence in his feelings about himself. He stated that at times he feels that he would be able to go back to playing his drums and "Then all of a sudden something tells me I'm too old or my left hand won't work right".

findings indicate that the subject has some insight into his condition. However, his judgment must be regarded as markedly impaired.

Diagnosis: Schizophrenic Reaction, undifferentiated type, chronic severe, manifested by tension, depression, confusion in thought, blocking of the thought processes, feelings of influence, suicidal preoccupation, delusional phase of jealousy, auditory hallucinations, and impaired insight and judgment.

Conclusion: In view of these findings, the psychiatric staff concurred unanimously in the opinion that the subject remains legally insane by reason of a major mental disorder which would prevent him from having a proper understanding of the proceeding pending against him and which also impairs his ability to properly assist in his own defense. They are further agreed that this subject's prognosis for recovery appears to be poor and that he will probably require indefinite hospitalization to assure his own safety and that of society. The staff does not consider the subject to be potentially dangerous except to the extent that, if released, he might persist in engaging in criminal activities similar to those with which he is presently charged.

C. E. Smith,
C. E. Smith, M. D.
Chief, Psychiatric Service.

Norman L. Graff,
Norman L. Graff, M. D.
Staff Psychiatrist.

Wm. H. Philpott, M. D.,
Wm. H. Philpott, M. D.,
Staff Psychiatrist.

127

Exhibit 5

Psychiatric Clinic

Criminal Court Building

1560 East 21st Street, Cleveland 14, Ohio, June 9, 1954

City of Cleveland
Municipal Court

County of Cuyahoga
Court of Common Pleas

Royal G. Grossman, M. D., Director
Wilfrid M. Gill, M. D.

Re: Earl P. Greenwood,

Mr. Loren Van Brocklin,
Asst. U. S. Attorney
438 Federal Building, Cleveland, Ohio

Dear Sir: On December 15, 1952, I received a request from your office to examine the above named defendant. Copy of my report of that examination is enclosed.

In addition to my duties with this Clinic, I am one of two psychiatrists on the staff of the Probate Judge of this County.

My next contact with this patient was on May 5 or 6, 1954, when I found him on the Probate Ward County Jail; having been transferred to this county by the Federal authorities, by authority of the Ohio Department of Welfare for commitment to a State Hospital.

I interviewed and observed him until May 13th, at which time his case was brought up in Probate Court. I testified that I saw a distinct change in the man's personality. He was clean and neat, alert, and gentlemanly in his behavior, and convincingly denied any hallucinations or delusions. He appeared to have some insight into the fact that he had been mentally ill and was well oriented.

It was my opinion (as of May 13, 1954) that the patient was in a fairly complete remission and for practical purposes recovered from his psychosis. However, I recommended to the Court that in view of the seriousness of the problem that he be sent to Receiving Hospital for a period to determine if this remission is genuine and complete. He was sent to Receiving Hospital May 18th. I have heard nothing more of him until today when I am informed that my last opinion has been corroborated by the Staff.

Opinion: This man was suffering from a psychosis on January 29, 1953 and is now in a state of remission equivalent to a recovery. He is not now insane in the legal sense.

Yours truly,

Royal G. Grossman,
ROYAL G. GROSSMAN, M. D.

RGG:el
encl.

128 [Clerk's Certificate to foregoing transcript omitted in printing.]

129 In the District Court of the United States of America
for the Western Division of the Western
District of Missouri

No. 18,123-Criminal

UNITED STATES

vs.

EARL P. GREENWOOD

Docket Entries

Nov. 20, 1952: Indictment filed.
Nov. 28, 1952: Transfer for plea and sentence to N. Dist. of Ohio filed. Rule 20.

Nov. 29, 1952: Transcript mailed to Clerk at Cleveland, Ohio.

Feb. 6, 1953: Transcript of proceedings had in the U. S. District Court for the Northern District of Ohio at Cleveland, remanding the case, and copy of order remanding for this District filed. Case reinstated this date.

Feb. 9, 1953: Warrant of removal from the Northern District of Ohio filed.

Feb. 13, 1953: The defendant appears in open court without counsel, and the defendant is ordered committed to the U. S. Medical Center at Springfield, Mo., for observation.

Feb. 16, 1953: Certified copy of order, remanding case from N. Dist. of Ohio, filed.

Feb. 17, 1953: Order, committing defendant to U. S. Medical Center at, Springfield, Missouri, for medical examination, filed. (Copies delivered to the Marshal.)

Apr. 22, 1953: Order, directing the Marshal to transport defendant from Medical Center to Kansas City, filed. (Copies delivered to the Marshal.)

May 6, 1953: Order of Feb. 17, 1953, bearing return of Marshal filed.

Nov. 16, 1953: Order, modifying order of Feb. 13, 1953, filed. (Copies to the Marshal.)

Feb. 1, 1954: Psychiatric Report from U. S. Medical Center filed. (File to Judge Ridge.)

Feb. 2, 1954: Order on mental examination filed. (Copy mailed to U. S. Medical Center and copy delivered to the U. S. Attorney.)

Feb. 8, 1954: Report from U. S. Medical Center filed. (Copy to U. S. Attorney & Probation Officer. File taken to Judge Ridge.)

May 18, 1954: Praecipe for warrant of arrest filed. (Warrant of arrest issued and delivered to O. J. Taylor, Asst. U. S. Attorney.)

June 18, 1954: Motion of defendant's counsel for appointment of qualified psychiatrists for hearing as to defendant's competency, and suggestions in support thereof, filed. (File to Judge Ridge.)

June 23, 1954: Order, appointing Psychiatrists to make mental examination and report, filed. (Attested copies delivered to the Probation Officer for the Doctors; attested copy to each of counsel.)

June 24, 1954: Warrant of Removal from the N. District of Ohio filed.

June 30, 1954: Following papers received from Clerk, U. S. District Court, Cleveland, Ohio: Commissioner's transcript form AO 109; Warrant for arrest of defendant, Temporary Commitment and Final Commitment:

130 July 2, 1954: Defendant appears in person and by counsel,

William Burrell, appointed by the Court. Hearing under Section 4246, 4247 and 4248, Title 18, set for hearing July 15, 1954. Defendant to be committed to Medical Center for further examination and is to be returned on or before the 13th day of July to this jurisdiction by the U. S. Marshal. U. S. Attorney to prepare proper order. Order directing the Marshal to transport defendant to Medical Center for further examination, filed.

July 15, 1954: The defendant appears in open Court with counsel for hearing on the defendant's sanity. Testimony is heard and the matter is submitted to the Court, and by the Court, taken under advisement.

July 28, 1954: Copy of order of 7-2-54, bearing the U. S. Marshal's return filed.

July 30, 1954: Order, committing the defendant to the custody of the Attorney General until he is declared sane or legally competent, filed. (Copies to the U. S. Marshal)

Aug. 6, 1954: Application and affidavit of defendant to appeal in forma pauperis filed. Notice of Appeal received.

Aug. 9, 1954: Order, sustaining defendant's application to appeal in forma pauperis filed. (Copy to each of counsel.) Notice of Appeal filed in duplicate. Duplicate Notice of Appeal and two certified copies of the docket entries mailed to the Clerk, U. S. Court of Appeals.

[Clerk's Certificate to foregoing paper omitted in printing.]

131 In United States Court of Appeals for the Eighth Circuit

No. 15,149

September Term, 1954

EARL P. GREENWOOD, Appellant

vs.

UNITED STATES OF AMERICA

Appeal from the United States District Court for the Western District of Missouri

Order Permitting Use of Typewritten Record and Brief

September 13, 1954

Appellant in this cause has been granted leave by the District Court to appeal in forma pauperis, and now on motion, It is Ordered by this Court that appellant be, and he is hereby, granted leave to submit his appeal on typewritten record and typewritten

brief. Of the brief five clear, legible copies should be filed, prepared on letter size paper, and fastened in the left margin, and a copy should be furnished to counsel for appellee.

September 13, 1954.

132 United States Court of Appeals for the Eighth Circuit

No. 15,149

EARL P. GREENWOOD, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Western District of Missouri

Opinion

February 14, 1955

William J. Burrell (appointed by the District Court) submitted brief for Appellant.

Edward L. Scheufler, United States Attorney, and O. J. Taylor, Assistant United States Attorney, submitted brief for Appellee.

Before GARDNER, *Chief Judge*, and SANBORN, WOODROUGH, JOHNSEN, COLLET, VOGEL, and VAN OOSTERHOUT, *Circuit Judges*.

133 SANBORN, Circuit Judge.

The questions for decision are (1) whether a person in federal custody, charged by indictment or information with a federal offense, lawfully may be committed to the custody of the Attorney General of the United States under Sections 4246, 4247, and 4248 of Title 18 U. S. C., if such accused person, in conformity with the procedure prescribed by Section 4244 of Title 18 U. S. C., is found by a federal district court to be insane or mentally incompetent to stand trial and it appears that his insanity or mental incompetency is more than temporary and is or may be permanent; and (2) whether the provisions of the above referred to Sections are unconstitutional, as encroachments upon powers reserved to the States by the Tenth Amendment, or as violative of the due process clause of the Fifth Amendment.

This appeal is from an order of the District Court, entered July 30, 1954, committing the defendant (appellant) to the cus-

duty of the Attorney General (1) until the sanity or mental competency of the defendant shall be restored; (2) until the mental condition of the defendant is so improved that if he is released he will not endanger the safety of the officers, the property, or other interests of the United States; or (3) until suitable arrangements can be made for the custody and care of the defendant by the State of Ohio, the State of the accused's residence; * * * whichever event above stated shall first occur." See United States v. Greenwood, 125 F. Supp. 177, 178.

The facts are virtually undisputed. The findings of fact of the District Court, upon which the order is based, are sustained by substantial evidence. The only finding challenged is that relating to the danger of releasing the defendant. That challenge is without merit.

134 The importance of the questions presented and the divergent views of federal judges who have considered them require a more detailed statement of the facts than would ordinarily be justified, since the facts illustrate an important segment of the problem that the statues under review were enacted to meet.

The defendant is under indictment by the federal grand jury for the Western District of Missouri. The indictment, which was returned November 20, 1952, charged him with having on October 22, 1952, in a Post Office in Kansas City, Missouri, committed two offenses proscribed by Section 2114, Title 18, U. S. C.: (1) felonious assault upon a custodian of mail and other property of the United States with intent to rob, and (2) the armed robbery of such custodian.

The defendant was arrested in Cleveland, Ohio, where he resided. Upon his application, the case was transferred under Rule 20 of the Federal Rules of Criminal Procedure, 18 U. S. C. A., to the Northern District of Ohio for plea and sentence. The United States District Court for that District on February 2, 1953, ordered that the defendant be removed and his case remanded to the Western District of Missouri, because a psychiatric examination and hearing indicated that he was not mentally competent to understand the proceedings against him. The defendant was received by the United States Marshal in Kansas City, Missouri, on February 7, 1953.

The District Court for the Western District of Missouri on February 17, 1953, ordered the Marshal to deliver the defendant to the United States Medical Center for Federal Prisoners at Springfield, Missouri, for an examination and report as to his mental condition. The first report is dated April 8,

135 1953, and is signed by Doctor C. E. Smith, Medical Director. The report, among other things, recites that in 1945

the defendant was arrested for robbery, and shortly thereafter for assault; that in 1946 he received a one-to-twenty-year sentence to the Mansfield State Reformatory, Mansfield, Ohio, on a forgery charge; that he freely admitted holding up the Post Office in Kansas City; that thereafter he held up a Post Office in Cleveland but was not prosecuted for the latter offense because a psychiatric examination showed he was a mental case. The report diagnosed the defendant's condition as "Schizophrenic Reaction, undifferentiated type, Acute," and stated that in the examiner's opinion the defendant was "legally insane."

A second report, dated January 26, 1954, from the Neuropsychiatric Staff of the Medical Center gave the same diagnosis of the mental condition of the defendant, omitting the word "Acute", and stated:

"The Neuropsychiatric Staff agreed unanimously that the patient remained psychotic and incompetent. The Staff agreed that the patient's illness is chronic, of long-standing and that the prognosis for recovery is poor. The Staff recommends that the committing court be advised that our findings indicate that it is unlikely that this subject will regain his sanity in the near future. Therefore the Neuropsychiatric Staff recommends that consideration be given to transferring this subject to a state hospital in his state of residence."

The Board of Examiners of the Medical Center in a report dated February 4, 1954, stated that the Board concurred unanimously in the opinion that the defendant remained psychotic and incompetent, and agreed that "the subject might be considered potentially dangerous to the extent that if released he might conceivably persist in criminal activities of the type with which he is presently charged." The Board in its report noted that efforts were being made to arrange for the custody and
136 care of the defendant in a state hospital, and recommended that he be considered a suitable candidate for such care if arrangements could be made.

In May of 1954, at the direction of the District Court for the Western District of Missouri, the defendant was transferred from the Medical Center to the custody of the appropriate authorities of the State of Ohio for commitment to a State hospital. The State authorities apparently had the defendant examined by a psychiatrist on the staff of the Probate Judge in Cleveland. The examiner concluded that the defendant was not "insane in a legal sense," and he was released by the state authorities. He was retaken into federal custody under an alias warrant issued by the District Court for the Western District of Missouri.

Upon the return of the defendant to Missouri, the District Court appointed William J. Burrell, of the Kansas City, Mis-

court, Inc., to represent him. On June 18, 1954, Mr. Burrell filed a motion for the appointment of psychiatrists and for a hearing as to the defendant's mental competency, pursuant to § 4244, Title 18, U. S. C. The court on June 23, 1954, appointed two psychiatrists to examine into the mental condition of the defendant and make report. On July 2, 1954, the court ordered the authorities at the Medical Center to re-examine the defendant with respect to his mental condition and competency. On July 8, 1954, the Neuropsychiatric Staff of the Medical Center made a report, from which we note the following:

"Diagnosis: Schizophrenic Reaction, undifferentiated type, chronic severe, manifested by tension, depression, confusion in thought, blocking of the thought processes, feelings of unreality, suicidal preoccupation, delusional ideas of influence, auditory hallucinations, and impaired insight and judgment.

"Conclusions: In view of these findings the psychiatric staff concurred unanimously in the opinion that the subject remains legally insane by reason of a major mental disorder which would prevent him from having a proper understanding of the proceeding pending against him and which also impairs his ability to properly assist in his own defense. They are further agreed that this subject's prognosis for recovery appears to be poor and that he will probably require indefinite hospitalization to insure his own safety and that of society. The staff does not consider the subject to be potentially dangerous except to the extent that if released, he might persist in engaging in criminal activities similar to those with which he is presently charged."

On July 15, 1954, the District Court conducted a hearing, under Section 4244 of Title 18, U. S. C., as to the mental competency of the defendant. The defendant was present in person and was represented by counsel appointed for him by the court. The two psychiatrists appointed by the court to examine the defendant testified that in their opinion the defendant was not insane or mentally incompetent to stand trial. Dr. Charles E. Smith, Chief of the Psychiatric Service at the Medical Center, testified at the hearing in support of the diagnosis made and conclusions reached by the Neuropsychiatric Staff of the Medical Center in their report of July 8, 1954, and in prior reports that the defendant was mentally incompetent to stand trial.

The court on July 30, 1954, entered the order under review, in which it found: (1) that the defendant was insane and mentally incompetent to stand trial; (2) that if released he probably would endanger the safety of officers, the property, or other interests of the United States; and (3) that no suitable arrangements for the custody and care of the defendant, other than

commitment to the custody of the Attorney General, were presently available.

138 The court granted the defendant leave to appeal in forma pauperis from the order of July 30, 1954. Mr. Burrell, who on his own time and at his own expense, admirably represented the defendant in the District Court, has furnished us with an excellent brief on behalf of the defendant, in which it is argued that Sections 4241, 4246, 4247 and 4248 of Title 18 U. S. C. are unconstitutional, and that the order appealed from is unlawful.

There can be no question that the procedure followed by the District Court conformed to the provisions of these sections. The court accorded the defendant the psychiatric examination and the hearing as to his mental competency required by Section 4241. The court made a determination that the defendant was mentally incompetent to stand trial, in conformity with Section 4246. That section provides that when such a determination is made, "the court may commit the accused to the custody of the Attorney General * * * until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law." The section further provides: "And if the court after hearing as provided in the preceding section 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided." Just what conditions specified in Section 4247 must exist to require the commitment of an accused who is mentally incompetent to be in the form prescribed by Section 4248, instead of that prescribed by Section 4246, is not entirely clear. The evident purpose of Section 4247 is to provide for the continued federal custody of an insane or mentally incompetent prisoner whose sentence is about to expire and who if released "will probably endanger the safety of the officers, the property, or other interests of the United States," and for

139 whose care and custody no other suitable arrangements are available. We assume that the finding by the court that "if released, accused probably will endanger the safety of officers, the property, or other interests of the United States," and that no other suitable arrangements for his custody were available, justified, if it did not require, the form of order prescribed by Section 4248 and which was entered by the District Court.

The legislation with which we are concerned was enacted September 7, 1949, c. 535, 63 Stat. 686, and entitled, "An Act to provide for the care and custody of insane persons charged with or convicted of offenses against the United States, and for other purposes." The Act has an interesting history.

The Judicial Conference of the United States, at its September Session in 1942, "authorized the Chief Justice to appoint a committee to study, in cooperation with the Attorney General, the treatment accorded by the federal courts to insane persons charged with crime." (Pages 18-19 of Report of the Judicial Conference, September Session 1942.) The Committee appointed consisted of three members of the Judicial Conference: Senior Circuit Judges Calvert Magruder of the First Circuit, Learned Hand of the Second Circuit, and Curtis D. Wilbur of the Ninth Circuit, together with Circuit Judges Otto Kerner of the Seventh Circuit, and Charles C. Simons (now Chief Judge) of the Sixth Circuit, District Judge Merrill E. Otis of the Eighth Circuit, and Chief Justice Edward C. Eicher of the District Court of the United States for the District of Columbia. Judge Magruder was the Chairman of the Committee.

The Judicial Conference, at its September Session in 1943 directed that the Committee be continued. The Report of the
140 Judicial Conference, September Session 1944, contains the following statement with reference to the work of the Committee:

"Treatment of Insane Persons Charged with Crime in the Federal Courts: Upon an interim report by the committee on the subject, submitted by Judge Magruder, its chairman, the Conference adopted the following resolution:

'It appearing from a study by the Bureau of Prisons that a considerable number of persons are being sentenced for federal offenses and sent to prison who, because of their insanity, should not have been convicted, and who, indeed, because of their mental incapacity to participate rationally in their defense, should never have been arraigned or brought to trial,

'Resolved that the Conference recommend:

'(1) That the district courts make fuller use of the sum provided in the annual appropriation for psychiatric examinations in occasional criminal cases at the instance of the court, for the purpose of procuring a competent and impartial psychiatric examination of accused persons brought before the court, where from the report of the probation officer or from other indications there is reason to believe that the accused may be mentally unsound;

'(2) That wherever possible, arrangements should be made with suitable local hospitals and other institutions and agencies whereby in the discretion of the district courts persons charged with crime may be sent temporarily to such institutions for observation and examination as to their mental condition, as is now done in some districts; and further that the Administrative Office

of the United States Courts be requested to survey the possibilities of this procedure in the various districts, and if agreeable to the respective district courts to arrange with the officials of local institutions for the use of their facilities for the examination of the mental competency of persons charged with crime;

111 that for this purpose the Administrative Office be authorized to use the services of the probation officers of the various districts.

"The committee was continued and was instructed to study in particular the following matters: (1) psychiatric examinations as a matter of course in a class of cases, to be determined, in which the offenders are most apt to be insane; (2) a procedure in other cases for determining before trial the sanity of an accused person; and (3) the protection of courts from insane litigants and a suitable procedure for dealing with such persons."

Before the Committee made its report to the Judicial Conference in 1945, two of the members of the Committee had died—Judge Otis and Chief Justice Eicher. Their places on the Committee were filled by the appointment of Chief Justice Bolitha J. Laws of the District Court for the District of Columbia, and Judge Carroll C. Hincks, then District Judge for the District of Connecticut (now a Judge of the United States Court of Appeals for the Second Circuit). All members of the Committee joined in a comprehensive report,[1] dated July 30, 1945, to the Judicial Conference at its September Session in 1945.

112 The Report of the Judicial Conference, September Session 1945, makes the following reference to the Committee Report and the action taken upon it:

"Treatment of Insane Persons Charged with Crime in the Federal Courts: The Conference received and approved the report of the committee on this subject, submitted by Judge Magruder, its chairman.

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[1] The Report of the Committee pointed out that the federal statutes prescribed no procedure for determining an accused's mental competence to stand trial; that it was desirable that a definite procedure be established; that, in the absence of any prescribed procedure, the courts had dealt with the problem in various ways, as shown by the cases of Youtsey v. United States, 6 Cir., 97 F. 937; United States v. Harriman (D. C. S. D. N. Y.), 4 F. Supp. 186; United States v. Chisholm (C. C. S. D. Ala.), 149 F. 284, and other cases; that when a court has determined that an accused is incompetent to be brought to trial because of insanity, the question arises as to what is to be done with the accused, who is in lawful custody of the federal government, charged with a federal offense; that it seems clear, provided the requisites of due process are satisfied, that the federal government would have power to confine such an accused to a mental hospital pending his restoration to sanity; but that such a person could not be committed to a mental institution for an indefinite period without a judicial determination of his present insanity, after notice and opportunity to be heard, citing Barry v. Hall (App. D. C.), 98 F. 2d 222.

The Report states:

"If the accused's mental disability appears not to be a transitory condition, but in all likelihood he will, because of his insanity, never be brought to trial, it would seem that, as a general rule the federal government should not assume responsibility for his hospitalization merely because he has been accused (but not convicted) of a federal crime. Normally such a person should be turned over to the state of his domicile to be confined in a state mental hospital if hospitalization is called for.

"The committee reported that it had under consideration
143 proposals for legislation dealing with procedure for determining the sanity of an accused person. The committee presented a revised draft of a bill, prepared in 1944, dealing with cases where insanity occurs after conviction, and with cases of insane persons whose sentences have expired. But the committee did not give its final approval to the draft in its present form, suggesting that it be circulated among the circuit and district judges so that their suggestions may be considered. The bill sets forth a procedure for raising the issue of the mental competence of an accused and for its determination; it makes provision for the disposition of an accused who has been judicially determined to be incompetent before trial; it provides a procedure for setting aside a conviction where the issue of mental competency has not been raised or determined before or during the trial, and where mental incompetence becomes apparent after the defendant has been committed to prison. Further, the bill makes provision for the commitment of any insane prisoner whose sentence is about to expire and whose release might endanger the safety of the officers, currency, domain or other interests of the United States. The draft makes no provision for psychiatric examinations as a matter of course in a class of cases, to be determined, in which the offenders are most apt to be insane, a matter which the committee was directed to consider further by the action of the Judicial Conference of last year. The committee reported that a study of the available federal statistics of the incidence of insanity revealed

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"But there may be cases where the accused's domicile cannot be satisfactorily established and where no state will assume responsibility for his care. The federal government may then be faced with the practical situation that it has lawful custody of a person whom it is not safe to let at large."

The Report also states that there should be some provision of law authorizing the continued confinement of insane criminals upon the expiration of their terms of confinement, where it would be dangerous to turn them loose upon society and where no state will assume responsibility for their custody.

The Report further states that the Committee had considered proposals for legislation dealing with the whole problem; that the Committee had not been ready to recommend legislation to the Judicial Conference in 1944; that since that time the draft which the Committee had had under consideration, together with comments and criticisms, had been submitted to the Attorney General and revised; that the Committee did not give final approval to the revised draft; that it should first be circulated among the federal district and circuit judges for their comments and criticisms, and the Committee should then consider whether further revisions were desirable; that is what the Committee proposed to do if the Conference believed that the revised draft statute, appended to the Report, offered a promising working basis for legislation.

With reference to the revised draft of the proposed statute, the Report stated:

"The draft bill sets forth a procedure for raising the issue as to the mental competence of an accused and for the determination of such issue; it also makes provision for the disposition of an accused who has been judicially determined to be incompetent to stand trial. [Cf. 18 U. S. C. §§ 4244, 4246.] The bill also provides a procedure for setting aside a conviction where the issue of mental competency was not raised and determined before or during the trial, and where such mental incompetence became apparent after the defendant was sent to prison. [Cf. 18 U. S. C. § 4245.] Further, the bill makes provision for federal commitment, under narrowly defined conditions, of insane prisoners whose sentence is about to expire and whose release might endanger the safety of the officers, currency, domain or other interest of the United States. [Cf. 18 U. S. C. §§ 4247, 4248.] These are the main features of the bill."

It is unnecessary to set forth or summarize the revised draft of the proposed statute referred to in the Report. The draft furnished virtually the entire basis, verbally and otherwise, for the legislation here involved.

no significant diligence is referable to the charges of offenses committed."

By letter dated January 23, 1946, the Director of the Administrative Office of the United States Courts sent to each federal Circuit and District Judge a copy of the report of the Committee to which was attached the tentative draft of the proposed bill, a letter of September 24, 1945, from the Honorable Tom Clark, Attorney General (now Mr. Justice Clark of the Supreme Court of the United States), to Judge Maguder, analyzing and ap-
144 proving the legislation tentatively suggested by the Committee, and a letter to Judge Maguder from Mr. James V. Bennett, Director of the Bureau of Prisons, dated June 25, 1945, also approving the proposed legislation. The Director of the Administrative Office in his letter of January 23, 1946, to the Circuit and District Judges stated that the Committee's report had been received and approved by the Judicial Conference. He invited suggestions relative to the subject matter from each federal judge.

On page 18 of the Report of the Judicial Conference for its October Session of 1946, appears the following:

"Treatment of Insane Persons Charged with Crime in the Federal Courts: The Conference approved, with certain amendments, the draft of a bill submitted by the Committee of the Conference on this subject which provides for a method of treatment, care, and custody of insane persons charged with or convicted of offenses against the United States. The bill, as amended, sets forth a procedure for raising the issue of the mental competence of an accused and for its determination; it makes provision for the disposition of an accused who has been judicially determined to be incompetent before trial. Procedure is prescribed for the setting aside of a conviction where the issue of mental competency has not been raised or determined before or during the trial, and where mental incompetency becomes apparent after the defendant has been committed to prison. The bill provides for the commitment to the Attorney General, upon a judicial proceeding and after a hearing, of any insane prisoner whose sentence is about to expire and whose release might endanger the safety of the officers, the property, or other interests of the United States."

At its session in September 1947, the Judicial Conference reaffirmed its previous recommendation regarding pro-
145 posed legislation relating to "Treatment of insane persons charged with crime in the Federal Courts."

The Report of the Regular Annual Meeting of the Judicial Conference held September 27–29, 1948, recites:

"Treatment of Insane Persons Charged with Crime in the Federal Courts: The Conference reaffirmed its interest in legislation providing for a method of treatment, care, and custody of insane

persons charged with or convicted of offenses against the United States, and approved the bill which passed the Senate (S. 550) on June 10, 1948."

This history of the legislation in question demonstrates that it was no hastily conceived solution for some inadequately and superficially considered problem, but was the result of a prolonged and painstaking study by a group of extremely competent federal judges of long experience and from different Circuits, and that the legislation had the approval of the Judicial Conference of the United States, of the Attorney General of the United States, and of the Director of the Bureau of Prisons of the United States.

The report of the House Committee on the Judiciary recommending the enactment of the legislation, which report can be found on pages 1928-1930 of Vol. 2 of U. S. Code Congressional Service, 81st Congress First Session 1949, states:

"The bill is the product of a long study, by a committee of the Judicial Conference of the United States, working in close cooperation with representatives of the Department of Justice, of the problem of the care and custody of insane persons charged with or convicted of offenses against the United States."

The House report incorporates a written statement of the Director of the Bureau of Prisons to the House Committee,
146 explaining the sections of the bill and the need for them.

The closing paragraph of the statement reads as follows:

"This bill is the result of prolonged, patient, and painstaking study and reflection by a constituted committee of judges (headed by United States Circuit Judge Calvert Magruder) and representatives of the Attorney General. Its early enactment would be of substantial assistance in clarifying a constantly recurring and vexatious problem."

Judge Ridge, of the United States District Court for the Western District of Missouri, who, on behalf of that court, conducted the proceedings and entered the order now under review, has consistently sustained the constitutionality and effectiveness of the legislation here involved and the validity of commitments made under its provisions. Higgins v. McGrath, D. C. W. D. Mo., 98 F. Supp. 671, 674; Kitchens v. Steele, D. C. W. D. Mo., 112 F. Supp. 383; and Craig v. Steele, D. C. W. D. Mo., 123 F. Supp. 153.

The views of Judge Ridge are concisely stated in Craig v. Steele, supra, at page 155 of 123 F. Supp., as follows:

"Once it is conceded that the Federal Government has the power to protect its sovereignty by enactment of the Criminal Code, it must follow that the Federal Government has powers to prescribe regulations concerning that Code, the same as a State

Government would have concerning a subject within its reserved powers." Hence, the Federal Government has the power to provide for the commitment of mental defectives found violating Federal laws, "until the accused shall be mentally competent to stand trial" Sec. 4240, supra, or if he is found to be permanently insane so that he will in all probability never be able to stand trial on a charge made against him, confine such a person "until (his) mental competency * * * shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur" as provided by the Congress in Sections 4247 and 4248, supra. For the Congress to so provide is not to commit a citizen for insanity as contended by petitioner, but to protect the sovereignty of the United States from law violators."

Judge Duncan, on the other hand, speaking for the same court, in Edwards v. Steele, D. C. W. D. Mo., 112 F. Supp. 282, which involved the validity of the commitment under Section 4246 of an accused to the custody of the Attorney General, said:

"The petitioner alleges that he is being illegally restrained of his liberty in that he has not been convicted of any offense and that he is being confined solely on the ground that he is insane. The court has heretofore passed on this question in numerous cases, the first of which was Dixon v. Steele, Warden, D. C., 101 F. Supp. 901. It is the opinion of this court, as stated in that case, that the United States courts may not commit persons who have not been convicted of any offense to confinement which might be for their natural lives in many instances, and that the adjudication and confinement of insane persons is a state function and not the function of the United States."

See, also, Dixon v. Steele, D. C. W. D. Mo., 101 F. Supp. 901, 908, 912 913. Judge Duncan is of the opinion that the legislation in suit authorizes the federal government to confine innocent persons solely because of their insanity and is an encroachment upon the reserved power of the states to deal with insane persons.

Judge Whittaker, speaking for the District Court for the Western District of Missouri, in Wright v. Steele, 125 F. Supp. 1, 3-4, which involved the commitment under § 4246 of an accused found to be insane, said:

"Sections 4244 and 4246, Title 18, U. S. C., obviously were enacted as a shield to protect a person temporarily mentally incompetent from having to stand trial upon charges which if committed by a sane person would constitute a Federal offense, until such accused has recovered from his temporary

incompetence sufficiently to understand the charges against him and to intelligently assist in his own defense, and he must be released as soon as it appears that the period consumed in determining his competency or incompetency to stand trial upon those charges does not approximate, and certainly not exceed, the probable sentence less 'good' time he would have received and served had he pleaded, or been found, guilty as charged, for that would be to turn the statute's shield into a sword."

In the Wright case Judge Whittaker was following substantially Wells v. Attorney General, 10 Cir., 203 F. 2d 330, and Biggins v. United States, 9 Cir., 205 F. 2d 650.

The Court of Appeals for the Tenth Circuit in the Wells case concluded, pages 333-337 of 203 F. 2d, that the federal government had the power to make provision for the proper care and treatment of persons who become temporarily insane while in the custody of the United States awaiting trial upon criminal charges, and to make provision for the care and treatment of federal prisoners who become mentally incompetent after conviction; and that Section 4246, in order to preserve its validity, was to be construed as authorizing the commitment of only an accused who was temporarily insane.

Judge Huxman dissented in the Wells case. He agreed with Judge Ridge that the right of a sovereign to deal with insane persons charged with or convicted of crime was incidental to the power to enact and administer a criminal code, and that the right does not depend upon the probable duration of the insanity of the offenders. Judge Huxman, among other things, said (page 563 of 203 F. 2d):

143 "I accordingly conclude that there is no constitutional prohibition against the government preventing it from making adequate, proper and humane provision for the care, custody and treatment of incompetent persons properly brought into court under the government's criminal jurisdiction, irrespective of whether that incapacity is of short or long duration. How that duty shall be discharged is for the government to say and the incompetent may not complain because the government chooses to provide for him in a proper institution of its own rather than to engage in a tug-of-war with the state to see whether it will take custody or control of him.".

The Court of Appeals for the Ninth Circuit in Biggins v. United States, supra, 205 F. 2d 650, approved the ruling in the Wells case that Congress could provide for the care of those who become temporarily insane while awaiting trial and for those who become insane while in custody after conviction. What the Ninth

Circuit did in the Higginbotham case was substantially what the Tenth Circuit had done in the Wells case, namely, direct the District Court to determine whether the accused could or could not, within a reasonable time be tried, and either to try him without unnecessary delay if that could be done, or otherwise to release him from federal custody.

It is safe to say that the validity and effectiveness of the statutory provisions which are under attack are not subject to question in so far as they provide for the commitment to the custody of the Attorney General of one charged with a federal offense whose mental incompetency to stand trial is temporary. It might even be doubted that statutory authority to provide for the temporary custody of the temporarily insane held for trial would be necessary.

The controversial question is whether Congress has the power to provide for the care and custody of a mentally incompetent accused whose incompetency to stand trial is or may be permanent or of indefinite duration.

The Government certainly has the right to take into custody under a warrant any person properly charged with having committed a federal offense, without first attempting to determine whether he is sane or insane. (See Rule 9 (a) Federal Rules of Criminal Procedure, 18 U. S. C. A. Once in federal custody, the right of an accused to release before trial is a conditional one. Stack v. Boyle, 342 U. S. 1, 4-5. No one could reasonably contend that a federal court would be compelled to admit to bail or to release on his own recognizance an accused charged with a federal offense, who, after being apprehended, was found to be insane or mentally incompetent to stand trial. The lawfulness of the apprehension and detention of a person charged with a federal offense is not dependent upon his mental condition.

The history of the legislation in suit demonstrates that the problem with which the Judicial Conference and Congress were concerned was not the social problem of caring for the insane, but the problem of devising in the interest of federal law enforcement some practical and legal method of dealing with prisoners, in lawful custody, charged with or convicted of federal crimes, whose mentality was such that they could not be dealt with as persons of normal intellect, and who would be a menace to society if released. The Government, in the administration of its criminal laws and the gathering in of those who violate them, inevitably finds itself with insane, mentally defective and mentally unstable prisoners on its hands. The defendant in this case is a typical example. He apparently has a penchant for robbing

post offices and otherwise violating the law. The State of Ohio will not care for him. Apparently its only solution of his
151 problem was to turn him loose upon society. The fact that the defendant may have been, and probably was, mentally irresponsible at the time he robbed the Post Office in Kansas City did not make his arrest or detention illegal. Insanity which will enable a law violator to escape conviction is not a license to violate the law, nor does it disable the Government from protecting itself and society from an insane and potentially dangerous offender by putting him where he can do no harm, provided the issue of his mental incompetency has been judicially determined.

The legislation under attack enables the federal district courts to determine, after due notice and hearing, the mental condition of persons in federal custody, charged with federal offenses, who are suspected of being mentally incompetent, and to provide for the care of those who are found to be incompetent to stand trial by committing them to the custody of the Attorney General when that appears to be the only or the best way available for providing for their care and custody.

We think that (1) the validity of the legislation in suit does not in any way depend upon the probable duration of the mental incompetency of federal prisoners who, in conformity with Section 4244, are found to be mentally incompetent; (2) the legislation was intended to mean exactly what its language imports; and (3) Congress did not, in enacting it, violate the due process clause of the Fifth Amendment or encroach upon the police power of the States reserved to them by the Tenth Amendment. When the federal government exerts any of its constitutional powers, "no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the ex-
152 ercise by a State of its police power or that it may tend to accomplish a similar purpose." Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146, 156.

The national government has the undoubted right to define federal crimes; to provide for the administration and enforcement of its criminal laws; to prescribe the penalties which will be incurred by those violating them; to furnish institutions where such violators can be confined; and generally to do whatever reasonably and lawfully can be done to protect society against such offenders. We have no doubt that as a necessary incident to the power to provide for the enforcement of the criminal laws of the United States, Congress had the power to enact the legislation in suit providing means for the commitment to the custody of the Attorney General of insane or mentally incompetent persons, such as the defendant, charged with offenses against the United States.

We regard the means adopted by Congress as having a real and substantial relation to the enforcement of the federal criminal laws, and as not unreasonable, arbitrary or capricious.

Our conclusion is that the statutes under review are constitutional and that the order appealed from is valid.

This Court and the District Court are under obligation to Mr. Burrell for representing the defendant. The questions raised by this appeal are important and controversial. The defendant may apply to the Supreme Court for certiorari without the payment of Clerk's fees or costs in this Court.

The order appealed from is affirmed.

VAN OOSTERHOUT, *Circuit Judge*, dissenting.

The majority opinion admirably sets out the legislative history of sections 4244-4248, inclusive, Title 18 U. S. C., 153, and clearly demonstrates the need for such legislation. I fully agree that one charged with a federal offense who is mentally incompetent to stand trial may be held in custody for a reasonable time awaiting trial, and that such right should be liberally construed. However, when it appears with reasonable certainty that the defendant is permanently insane and that he will never be mentally competent to stand trial, constitutional power on the part of the Government is lacking to incarcerate the defendant for an indefinite period, likely the remainder of his life. Under such circumstances, it would appear that no further purpose exists for his detention to await a criminal trial which can never take place. The defendant is presumed to be innocent until proven guilty. If because of his insanity he can never be tried, he will have no opportunity to be adjudged not guilty generally or not guilty by reason of insanity. Undoubtedly, in many cases the defendant found incompetent to stand trial would be able to establish that he was insane at the time of the commission of the alleged offense and consequently that he is not a criminal at all. An insane person is an ill person.

After a judicial determination of permanent insanity the defendant is being held because of his insanity rather than to await trial for the crime charged. Section 4246, after providing for holding of defendant until he is competent to stand trial, then provides: "And if the court after hearing as provided in the preceding sections 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided." Sec-

tion 4247 pertains to holding of insane convicted defendants whose terms are about to expire. Section 4248 provides in part:

"Whenever a person shall be committed pursuant to section 4247 of this title, his commitment shall run until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that, if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur."

The section 4248 commitment appears to be bottomed upon insanity rather than criminality. If the defendant is to be held only to await trial, there is no necessity or purpose in the last sentence of section 4246 hereinabove quoted.

The decided cases on the issue in controversy here are cited and fairly discussed in the majority opinion. The Courts of Appeals of the Ninth and Tenth Circuits have held that the Government has no constitutional right to continue to hold an accused defendant, who has not been convicted and who has been found to be permanently insane. Wells v. Attorney General, 10 Cir., 204 F. 2d 556; Higgins v. United States, 9 Cir., 205 F. 2d 650. The opinions of Judges Duncan and Whittaker of the Western Division of Missouri, cited in the majority opinion, are to the same effect. The only contrary holdings are Judge Ridge's opinions and the dissenting opinion of Judge Huxman in the Wells case.

The Constitution of the United States has not delegated the care of the insane to the United States, nor prohibited such power to the States. Under the Tenth Amendment to the Constitution the duty and responsibility in connection with insane persons rest with the States.

I realize that this case presents a difficult situation and that as a practical matter much can be said in favor of the result arrived at by the majority. No bad motive on the part of the Government in retaining custody is shown. It may well be for the defendant's best interest, as well as that of the public, that he remain in the Government hospital. However, as I am convinced that the United States has no jurisdiction over permanently insane persons for an indefinite period this conclusion can not be altered by practical considerations.

I would reverse this case and remand it with directions to release the defendant from federal restraint.

In United States Court of Appeals

For the

Eighth Circuit

No. 15,179

September Term, 1954.

EARL P. GREENWOOD, APPELLANT

vs.

UNITED STATES OF AMERICA

Judgment

February 14, 1955

Appeal from the United States District Court for the Western District of Missouri.

This cause came on to be heard on the record from the United States District Court for the Western District of Missouri, and on the briefs filed by the respective parties.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the Order of the said District Court appealed from in this cause be, and it is hereby, affirmed.

February 14th, 1955.

157 [Clerk's Certificate to foregoing paper omitted in printing.]

158 Supreme Court of the United States

No. 23, Misc., October Term, 1955

EARL P. GREENWOOD, PETITIONER

vs.

UNITED STATES OF AMERICA

Order granting certiorari

October 10, 1955

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is

ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 460.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

October 10, 1955.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955.

No. 460

EARL P. GREENWOOD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF PETITIONER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 460

EARL P. GREENWOOD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF PETITIONER

Opinions Below

The opinions of the Court of Appeals (R. 75, 89) are reported at 219 F.2d 376. The order and opinion of the District Court (R. 17-21) are reported at 125 F.Supp. 777 (W.D.Mo.).

Jurisdiction

The judgment of the Court of Appeals for the Eighth Circuit was entered on February 14, 1955. The petition

for a writ of certiorari was filed on March 14, 1955. Certiorari was granted on October 10, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Constitutional Provisions and Statutes Involved

The pertinent provisions of the United States Constitution are found in Amendment V and Amendment X to the said Constitution. The pertinent provisions of the United States Code are Sections 4244, 4245, 4246, 4247, and 4248. All of the foregoing provisions are set forth in the Appendix hereto.

Questions Presented

1. Whether under a proper interpretation of Sections 4246, 4247 and 4248 of Title 18, U.S.C., a person in Federal custody, such as petitioner, charged by indictment or information with a Federal offense, lawfully may be committed to the custody of the Attorney General of the United States, if such accused person is found to be insane or mentally incompetent to stand trial and it appears that his insanity or mental incompetency is more than temporary and is or may be permanent.

2. Whether Sections 4244, 4246, 4247 and 4248 of Title 18, U.S.C., and each of them are unconstitutional as encroachments upon powers reserved to the states by the Tenth Amendment, or as violative of the due process clause of the Fifth Amendment, so as to make petitioner's commitment thereunder unlawful.

3. Whether there was sufficient evidence to support the findings of the United States District Court in its order of July 30, 1954 that petitioner, if released, "probably would endanger the safety of officers, the property or other interests of the United States".

Statement of the Case

This case is before this Court on Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to review an order of said Court entered on February 14, 1955, which affirmed an order of the Honorable Albert A. Ridge, United States District Judge for the Western Division of the Western District of Missouri, entered on July 30, 1954, finding the petitioner insane, etc., and committing the petitioner to the custody of the Attorney General of the United States (1) until the sanity or mental competency of the petitioner shall be restored; (2) until the mental condition of the petitioner is so improved that if he is released he will not endanger the safety of the officers, the property, or other interests of the United States; or, (3) until suitable arrangements can be made for the custody and care of the petitioner by the State of Ohio, the state of the accused's residence. (R. 48). An indictment in two Counts returned against petitioner charging armed robbery of a United States Post Office and jeopardizing the life of a postal clerk was filed on November 20, 1952. The crime was allegedly committed on October 22, 1952. (R. 1, 2). Thereafter in accordance with Rule 20, *Federal Rules of Criminal Procedure*, petitioner was transferred to the Eastern Division of the Northern District of Ohio (R. 2, 3) but at a hearing before that Court it was determined that petitioner was insane and the case was remanded to the Western Division of the Western District of Missouri (R. 7). Dr. Grossman, a psychiatrist, testified before the Ohio Court that he examined petitioner on December 29, 1952 and January 29, 1953 and that petitioner was suffering from schizophrenia (R. 6) and that he was possibly fully as sick or sicker in November, 1952 than he was in December, 1952 (R. 7).

On February 17, 1953, Judge Albert L. Reeves, of the

United States District Court for the Western District of Missouri, entered an order that the petitioner be delivered "into the custody of the authorities of the United States Medical Center for Federal Prisoners at Springfield, Missouri and that an examination be conducted by the medical authorities of said institution for the purpose of ascertaining the mental condition of the defendant and that a report be furnished the Court as soon as practicable." (R. 9, 10). Dr. C. E. Smith, Chief of the Psychiatric Service of the Medical Center for Federal Prisoners in Springfield, Missouri made a report on April 8, 1953, and it was the examiner's opinion that the petitioner was "legally insane". "Although he correctly verbalizes the difference between right and wrong, he is unable to properly choose between, because he is motivated by insane delusions. In addition, his "delusional thinking renders him unable to properly understand the nature of the charges pending against him and his mental confusion and depression interfere with his ability to cooperate with counsel in this defense." (R. 64). Petitioner remained in the custody of the Warden of the United States Medical Center for Federal Prisoners at Springfield, Missouri until May of 1954, at which time he was transferred from the Medical Center for Federal Prisoners at Springfield, Missouri to the custody of the authorities of the State of Ohio in compliance with an order of the Court made under date of February 2, 1954 (R. 19). On about February 1, 1954, the neuropsychiatric staff at the Medical Center for Federal Prisoners in Springfield, Missouri had filed a report with the Court wherein they "agreed unanimously that the patient (petitioner) remained psychotic and incompetent. The staff agreed that the patient's illness is chronic, of long standing and that the prognosis for recovery is poor." (R. 65).

An additional report of the Board of Examiners was made on or about February 4, 1954, relating to the petitioner and at that time the Board of Examiners concurred unanimously in the opinion that the subject remains psychotic and incompetent. The Board further concurs in the opinion that the subject is chronically ill and that at the present time there appears to be little likelihood of his recovery to the extent that he might be considered competent in the near future.

"The Board considered at length the question of this defendant's potential dangerousness under the conditions specified in Section 4247. The Board agreed that this subject might be considered potentially dangerous to the extent that if released he might conceivably persist in criminal activities of the type with which he is presently charged. In considering this man's mental illness the Board finds that he does not hold any fixed delusions concerning wanting to harm any person or group of persons either officials of the government or otherwise so that in this respect he probably would not "constitute a danger to the safety of officers, property or other interests of the United States." (R. 68).

After the petitioner was lodged in the custody of the authority of the State of Ohio, Dr. Royal G. Grossman, a psychiatrist in Cleveland, examined petitioner in May of 1954 and testified before the Probate Court in Cleveland that petitioner was clean and alert and in a period of remission. (R. 72). It is apparent that the Probate Court in Cleveland, Ohio determined that it was safe to release petitioner and he was so released. (R. 20, 72). Thereafter a warrant of arrest was immediately issued by the United States Attorney and petitioner was seized by the Federal authorities on or about May 18, 1954 and was returned to the jurisdiction of the United States District Court at Kansas City, Missouri. (R. 20). On June 23, 1954, the

Court appointed Dr. Herman S. Major and Dr. G. Wilse Robinson, Sr., psychiatrists, to examine the petitioner to determine his mental competency. (R. 14). Also petitioner was returned to the Medical Center at Springfield, Missouri for further observation. On Thursday, July 15, 1954, there was a hearing before Judge Ridge at which testimony was given by Dr. Major, Dr. Robinson and also by Dr. C. E. Smith, the Chief of the Psychiatric Service for the Medical Center at Springfield, Missouri, all in connection with the ability of the defendant to stand trial and while Drs. Robinson and Major found the defendant sane, the opinion of Dr. C. E. Smith and of his entire staff at the Medical Center at Springfield, Missouri was to the effect that petitioner remains "legally insane by reason of a major mental disorder which would prevent him from having a proper understanding of the proceedings pending against him and which also impairs his ability to properly assist in his own defense. They are further agreed that this subject's prognosis for recovery appears to be poor and that he would probably require indefinite hospitalization to insure his own safety and that of society. The staff does not consider the subject to be potentially dangerous except to the extent that if released, he might persist in engaging in criminal activities similar to those with which he is presently charged." (R. 71). At no time during petitioner's confinement at Springfield, Missouri did any of the psychiatrists find him to be sane. (R. 51).

Subsequent to the hearing of July 15, 1954, the United States District Court entered an order on July 30, 1954, finding that the defendant was insane and so mentally incompetent that he cannot stand trial on the criminal charges pending against him, further finding that if released, accused probably will endanger the safety of officers, the property or other interests of the United States, and further finding that no suitable arrangements for the custody

and care of the accused other than that which may be provided by commitment of accused to the custody of the Attorney General of the United States are presently available." (R. 18). As a consequence of the foregoing findings the Court entered an order committing petitioner "to the custody of the Attorney General of the United States or its duly authorized agents, (1) until the sanity or mental competency of the defendant shall be restored; (2) until the mental condition of the defendant is so improved that, if he is released, he will not endanger the safety of the officers, the property or other interests of the United States; or, (3) until suitable arrangements can be made for the custody and care of the defendant by the State of Ohio, the state of the accused's residence." It was further ordered "that defendant remain in the custody of the Attorney General of the United States until whichever event above stated shall first occur." (R. 18). It is from the above order of July 30, 1954 that appeal was taken to the United States Court of Appeals for the Eighth Circuit. This United States Court of Appeals affirmed the order of the United States District Court on February 14, 1955, and the petition for writ of certiorari was granted herein on October 10, 1955, as was the motion of petitioner to proceed in forma pauperis. Petitioner is still confined at the United States Medical Center for Federal Prisoners at Springfield, Missouri. He has been confined by Federal authorities since November of 1952, except for the brief period when he was in the custody of the State of Ohio.

Summary of Argument

I

Sections 4244, 4246, 4247 and 4248 of Title 18, U.S.C., properly interpreted do not authorize the detention in Federal custody of a person charged with a Federal offense

when such person is mentally incompetent to stand trial and it appears that he may never be mentally competent to stand trial.

A. The aforesaid construction is supported by decisions of the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for the Tenth Circuit.

B. To hold otherwise would be to construe the aforesaid sections as unconstitutional since the Federal government does not have the power to restrain a man because of his mental condition and if it appears that a prisoner because of his mental condition will never be able to stand trial on the charges against him there is no justifiable reason for the Federal government to continue to restrain him.

II

If Sections 4244, 4246, 4247 and 4248 of Title 18, U.S.C., do authorize the detention in Federal custody of a person charged with a Federal offense who because of his mental condition probably never will be able to stand trial on the charges against him, these sections are unconstitutional as encroachments upon the rights reserved to the states under the Tenth Amendment and in violation of the due process clause of the Fifth Amendment.

A. The Federal government has neither constitutional nor inherent power to enter the general field of lunacy or to confine the insane and therefore when it appears that the continued detention of an accused rests exclusively or principally upon the ground of the accused's insanity the accused must be released to the custody of the state of his residence and the Federal government has no longer any power to restrain him.

B. The mere fact that the Federal government is dissatisfied with the action or facilities of a state with respect

to the insane is no justification whatsoever for the Federal government entering the field of lunacy.

C. Sections 4247 and 4248 are clearly based on insanity and neither has any relation to the charges pending against the accused or prisoner and therefore these sections are unconstitutional regardless of the question of the permanency of the mental condition of the person confined under these sections.

III

If the proposition as set forth in paragraph I herein is correct petitioner should be released because the evidence clearly shows that he will likely never be able to be tried on the charges against him because of his mental condition or if the statutes are construed to authorize the present detention of your petitioner they are unconstitutional and petitioner should be released because he is being unlawfully detained.

IV

There was insufficient evidence on which to commit petitioner on the ground that he might endanger the persons or the property of the United States and furthermore the United States has no authority to commit a person for such a reason.

Argument

SECTIONS 4236, 4247 AND 4248 OF TITLE 18, U.S.C., PROPERLY INTERPRETED, DO NOT AUTHORIZE THE COMMITMENT OF A PERSON IN FEDERAL CUSTODY, CHARGED WITH A FEDERAL OFFENSE, WHO IS MENTALLY INCOMPETENT TO STAND TRIAL, WHEN IT APPEARS THAT HIS INSANITY OR MENTAL INCOMPETENCY IS NOT TEMPORARY AND IS OR MAY BE PERMANENT, AND THEREFORE SINCE IT APPEARS THAT PETITIONER, EARL P. GREENWOOD, BECAUSE OF THE PERMANENCY OF HIS MENTAL CONDITION PROBABLY NEVER WILL BE ABLE TO STAND TRIAL ON THE CHARGES PENDING AGAINST HIM, HE SHOULD BE RELEASED.

I

Both the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Tenth Circuit have held that the statutes in question authorize the detention by the Federal authorities of a person accused of a crime and who is awaiting trial, provided such person is only temporarily insane and whose trial can be expected within a reasonable time, but they have held that the said statutes do not authorize the detention in Federal custody of such a person who is found to be permanently insane or whose mental condition is such that it is not likely that he can be tried within a reasonable time. The case in point in the Tenth Circuit is *Wells* v. *Attorney General*, 201 F.2d 556. The case in point in the Ninth Circuit is *Huggins* v. *United States*, 205 F.2d 650.

Before discussing these cases in detail it might be advisable to review briefly the sections of the United States Code which are applicable. Section 4244, Title 18, U.S.C., provides that when, after arrest and prior to sentence or prior to the expiration of any period of probation, the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be insane he shall file a motion for judicial determina-

tion of such competency. Or, the accused may file a motion and in either case the Court may appoint a psychiatrist to examine the mental condition of the accused. If the report indicates a state of insanity the Court shall hold a hearing upon due notice and make a finding with respect thereto. Section 4245 of Title 18, U.S.C., covers a situation where a person has been convicted of a Federal crime and it is thereafter determined that it is likely that he was incompetent at the time of his trial and that issue was not raised at the trial and this section is not directly in point in this case. Under Section 4246, Title 18, U.S.C., whenever the trial Court shall determine under Section 4244 that an accused is mentally incompetent the Court may commit the accused to the custody of the Attorney General until the accused shall be mentally competent to stand trial or until the charges against him are disposed of according to law. If the Court shall determine that the conditions specified in Section 4247, Title 18, U.S.C., exist, the commitment shall be governed by Section 4248, Title 18, U.S.C. The conditions as specified under Section 4247 are apparently that "The accused if released will probably endanger the safety of the officers, the property or other interests of the United States and suitable arrangements for the custody and care of the prisoner are not otherwise available". A commitment under Section 4248 shall run "until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property or other interests of the United States or until suitable arrangements have been made for the custody and care of the prisoner by the state of his residence, whichever event shall occur first". Insofar as the instant action is concerned, petitioner was examined under Section 4244, a hearing was had, and the Court made a finding that the accused

was mentally incompetent to stand trial and further found under Section 4246 that the conditions in Section 4247 existed and the order of the Court entered on July 30, 1954 was in accordance with the provisions of Section 4248. These sections are obviously so interrelated that they must stand or fall together.

In the case in the Tenth Circuit referred to above, *Wells v. Attorney General*, 201 F.2d 556 an order had been entered by the District Court confining the accused who was not competent to stand trial under Section 4246, Title 18, U.S.C., to the custody of Attorney General or his authorized representative until he became mentally competent to stand trial or until the charge against him was disposed of according to law. The accused instituted habeas corpus proceedings in which he challenged the validity of the order and his confinement thereunder on the ground that the United States was not empowered to detain and incarcerate him for an indefinite period of time, perhaps for life, in advance of trial of the criminal charge merely because he was insane. The trial court had denied the petition and the Court of Appeals in considering the matter stated (l.c. 559):

> "The several states in their character as *parens patriae* have general power and are under the general duty of caring for insane persons. The prerogative is a segment of police power. In the exercise of such power, insane persons may be restrained and confined both for the welfare of themselves and for the protection of the public. And if the exactions of due process are met, such restraint and confinement do not violate any constitutional right of the individual. *In re Dowdell*, 169 Mass. 387, 47 N.E. 1033; *Sperry v. German Savings Bank*, 192 N.Y. 8, 84 N.E. 406; *McMahon v. Mead*, 30 S.D. 515, 139 N.W. 122; *State v. Saffron*, 146

Wash. 202, 262 P. 970; *Ex Parte Perry*, 137 N.J. Eq. 161, 43 A.2d 885; *People v. Jaussen*, 263 Ill. App. 101; *Shaplen v. Cahoon*, D.C., 258 F. 752.

"While the care of insane persons is essentially the function of the states in their sovereign capacity as *parens patriae*, and while the Federal government has neither constitutional nor inherent power to enter the general field of lunacy, Congress has the power to make provision for the proper care and treatment of persons who become temporarily insane while in custody of the United States awaiting trial upon criminal charges, and to make provision for the care and treatment of federal prisoners who become mentally incompetent during their incarceration after conviction. *Estabrook v. King*, 8 Cir., 119 F.2d 607; *Jones v. Pescor*, 8 Cir., 169 F.2d 853."

The Court further stated (l.c. 560):

"It is implicit in the quoted language that the concern of Congress was to make provision for the care and treatment of persons whose return to mental competency at sometime in the future is reasonably to be expected, not those hopelessly insane and whose restoration to mental competency is never to be expected. Furthermore, to construe the Statute as authorizing the United States to detain and incarcerate perhaps during the remainder of their lives, persons who were permanently and hopelessly insane at the time of their arrest on criminal charges or who become so while awaiting trial on criminal charges and for that reason will never be tried is to ascribe to Congress an effort to clothe the United States with power to assume the role of *parens patriae* and enter the general field of lunacy in respect to persons in that condition. Neither

the language of the statute nor its legislative history compels that construction. Instead, it is fairly clear that, in the enactment of the statute the intent and purpose of Congress was to go no further than to make humane provision for the care and treatment of persons who were temporarily incompetent at the time of their arrest or who become so before trial on criminal charges and whose restoration to competency may be reasonably expected at some time in the future and therefore whose trial on the criminal charges at some time in the future may reasonably be expected. That construction does not violate the language of the statute. It does not run afoul of the legislative history of the statute. And it preserves the statute against the present attack of invalidity on constitutional grounds."

The United States Court of Appeals for the Tenth Circuit thus recognized that the Constitution did not authorize Congress to invade the general field of lunacy and attempted to construe the Federal statutes relating to mental defectives only to permit the detention of those accused of a crime who are temporarily insane and accordingly remanded the case to the District Court for the determination of the permanency of the petitioner's condition.

The United States Court of Appeals for the Ninth Circuit in the case of *Higgins* v. *United States*, 205 F.2d 650, approved the ruling in the *Wells* case that Congress could provide for the care of those who become temporarily insane while awaiting trial and held that the accused, if it was determined he was unable to stand trial within a reasonable time by reason of his mental capacity, must be released. The Court recognized that to hold otherwise would be to construe the statute as unconstitutional. The Court stated at the conclusion of its opinion as follows (l.c.653):

"Upon the going down of the mandate, the court should promptly determine whether defendant is presently able mentally to stand trial or in the near future will be. Dependent upon the court's determination that defendant is or soon will be able to stand trial, he should be put to trial without unnecessary delay. If the court should determine that defendant is not, and will not within a reasonable time be able to stand trial by reason of mental incapacity, he should be released from federal restraint, preferably to appropriate state authorities."

The opinion of Judge Charles E. Whittaker of the United States District Court for the Western District of Missouri in *Wright* v. *Steele*, 125 F.Supp. 1, is substantially in accord with the opinion of the Ninth Circuit in the *Wells* case and of the Tenth Circuit in the *Higgins* case. In the *Wright* case petitioner had been confined by the United States District Court for the Southern District of West Virginia under Section 4246, Title 18, U.S.C. "until he shall be mentally competent to stand trial or until or until the pending charges against him are disposed of according to law, whichever shall first occur, or unless and until he is determined to be permanently incompetent by proper authorities." Judge Whittaker cited the *Higgins* case and the *Wells* case with approval and concluded that the statutes in question authorized the detention of a person who was temporarily insane while in custody of the United States awaiting trial upon criminal charges and that if petitioner was not within a reasonable time after his commitment under Section 4246 found mentally competent to stand trial upon the charges against him he must be discharged. The Court stated (l.c.3):

"Sections 4244 and 4246, Title 18 U. S. C., obviously were enacted as a shield to protect a person, temporarily mentally incompetent, from having to stand trial, upon charges which if committed by a sane person would constitute a Federal offense, until such accused has recovered from his temporary incompetence sufficiently to understand the charges against him and to intelligently assist in his own defense, and care must be taken to see that the period consumed in determining his competency or incompetency to stand trial upon those charges does not approximate, and certainly not exceed, the probable sentence, less 'good' time he would have received and served had he pleaded, or been found, guilty as charged, for that would be to turn the statutory shield into a sword."

In the above case the Court concluded that as a matter of law under the circumstances one and one-half years was a reasonable time within which to determine the competency of the accused to stand trial on the charges against him and that to hold petitioner for a longer time would be to extend the statutes in question beyond constitutional limits. While this opinion was modified the modification does not in any way affect the holding therein. It is interesting to note in Judge Whittaker's opinion that he stated in substance that while a state institution or state authorities might have facilities which would be less suitable to the needs of the petitioner yet the humanitarian factor was not for his determination but the sole question before him was whether or not petitioner was being lawfully deprived of his liberty and the Court concluded that he was.

As to whether or not your petitioner, Earl P. Greenwood, has been detained an unreasonable time to determine his mental competency to stand trial we should emphasize that he has now been in Federal custody since November of

1952, a period of three years, except for a very brief period when he was in the custody of the authorities in the State of Ohio. Greenwood was found to be suffering from schizophrenia and mentally incompetent by a psychiatrist who testified before the United States District Court in Cleveland, Ohio at a hearing on February 2, 1953 (R. 6). Successive reports of the neuro-psychiatric staff at the United States Medical Center for Federal Prisoners, in Springfield, Missouri dated April 8, 1953, January 14, 1954, February 4, 1954 and July 8, 1954 and set forth in detail on pages 59 to 71 of the Record cover a period of fifteen months and clearly show the permanency of petitioner's mental condition. As early as February 2, 1954, Judge Albert Ridge of the United States District Court, Western District of Missouri, who made the final order that is being appealed from herein, refered to the report of the staff of the Medical Center for Federal Prisoners at Springfield, Missouri made on February 1, 1954 wherein it was found that petitioner Greenwood remained "psychiotic and incompetent", and "that it is unlikely that this subject will regain his sanity in the near future" and the Court stated "it now having been determined that defendant is so mentally defective that he will probably never be able to stand trial on the charge pending against him in this Court, a further hearing must be held which will resolve the power to commit defendant as mentally defective under the condition specified in Section 4247 * * *" (R. 12). Judge Ridge in his order made on July 30, 1954 again found that "accused herein is presently insane and so mentally incompetent that he cannot stand trial on the criminal charges pending against him in this Court", (R. 18).

If Sections 4244, 4246, 4247 and 4248 of Title 18, U. S. C. are construed in accordance with the foregoing authorities we must conclude under the facts in this case that petitioner should be released for the reason that the record shows that

his mental condition is not temporary, that he has been confined already for a period of three years, that it appears unlikely that he will ever be able to stand trial on the charges against him.

II

IF SECTIONS 4244, 4246, 4247 AND 4248, OF TITLE 18, U.S.C., PROPERLY CONSTRUED AND INTERPRETED, PROVIDE FOR THE DETENTION OF A PERSON ACCUSED OF A FEDERAL CRIME WHO IS PERMANENTLY INSANE AND WHO APPEARS WILL NEVER BE ABLE TO STAND TRIAL ON THE CHARGES AGAINST HIM, WHEN THESE SECTIONS ARE CONSTITUTIONAL AS ENCROACHMENTS UPON POWERS RESERVED TO THE STATES BY THE TENTH AMENDMENT AND AS VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND THEREFORE PETITIONER'S COMMITMENT THEREUNDER IS UNLAWFUL AND HE SHOULD BE RELEASED. FURTHERMORE, SECTIONS 4247 AND 4248 OF TITLE 18, U.S.C., ARE UNCONSTITUTIONAL AS VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND AS ENCROACHMENTS UPON POWERS RESERVED TO THE STATES UNDER THE TENTH AMENDMENT, REGARDLESS OF WHETHER OR NOT THEY AUTHORIZE THE DETENTION OF A PERSON ACCUSED OF A FEDERAL CRIME WHO IS PERMANENTLY INSANE.

The cases of *Wells* v. *Attorney General*, 201 F. 2d 556; *Higgins* v. *United States*, 205 F. 2d 650, and *Wright* v. *Steele*, 125 F. Supp. 1, discussed *supra*, are clearly authority for the first sentence of the above proposition. These cases in holding that the statutes in question in order to be constitutional must be construed so as to authorize only the detention of those accused of Federal crimes who are temporarily insane, necessarily hold that if the statutes authorize the detention of those accused of Federal crimes who are permanently insane or who because of their mental incompetency are unlikely ever to be able to stand trial on the charges against them, then these statutes are uncon-

stitutional. Judge Duncan of the United States District Court for the Western District of Missouri has made a very clear analysis of this problem which is found in the case of *Dixon v. Steele*, 104 F. Supp. 904. We quote from page 908:

"If Sec. 4246, Title 18, U. S. C. A. is valid, then an insane person charged with a criminal offense can be imprisoned for the rest of his life without any trial as to the issue of whether or not he committed an offense, but only as to the question of whether or not he was sane or insane at the time of the hearing.

"In this case it seems clear that there is no dispute as to the question of applicant's insanity, and little dispute as to the fact that it will continue so long as the man shall live. For that, he is confined without term in Federal custody—confinement not for a crime, but for insanity.

"This question was fully discussed in the Memorandum Opinion in the first case, filed on June 28, 1951. There is no question about the right of the Congress to restrain insane persons in those jurisdictions over which it retains complete legislative authority, such as the District of Columbia and the Territories, and over such groups as it exercises exclusive legislative authority, but it is difficult for me to conceive of Federal constitutional authority to invade the rights of the states in the confinement of its citizens on the ground of insanity.

"Suggestion has been made that in view of the fact that the party is being held in custody for the violation of a Federal law, such custody may continue until the case is disposed of, although the accused person may be hopelessly insane. With that view I cannot agree.

"It is my conclusion that the right to confine persons

for insanity is reserved to the states, and that the statute in so far as it attempts, if it does, to confer upon a court the right to commit an accused person to the United States authorities for imprisonment for an uncertain, indefinite time pending restoration to his sanity or until the charge against him is otherwise disposed of, is outside the constitutional authority of the Congress, and that the applicant in this case is being illegally restrained of his liberty, and is entitled to be released."

The above view was followed again by Judge Duncan in the case of *Edwards v. Steele*, 112 F. Supp. 382, in which Edwards had been convicted and sentenced in the United States District Court for the District of Columbia. Subsequent to the conviction the Court set aside same on the ground that the defendant was mentally incompetent at the time of his conviction and was unable to understand the proceedings against him or to assist in his defense. Pursuant to these findings Edwards was committed to the custody of the Attorney General of the United States under authority of Section 4246, Title 18, U. S. C. Edwards filed a petition for *habeas corpus* and the Court in granting his petition held and stated as follows (l. c. 383):

"The petitioner alleges that he is being illegally restrained of his liberty in that he has not been convicted of any offense and that he is being confined solely on the ground that he is insane. The court has heretofore passed on this question in numerous cases, the first of which was *Dixon v. Steele, Warden*, D. C. 104 F. Supp. 904. It is the opinion of this Court as stated in that case, that the United States courts may not commit persons who have not been convicted of any offense to confinement which might be for their natural lives in many instances, and that the adjudica-

tion and confinement of insane persons is a state function and not the function of the United States.

"It is further the conclusion of the court that a person who was insane at the time of the commission of an offense is not legally capable of committing an offense, and that question should be determined where a defendant is found to be insane. If he is insane at the time of the commission of the offense, he is not legally guilty and cannot be confined in a Federal institution, except in such jurisdictions where the United States has exclusive jurisdiction.

. . . . . .

"The court is without authority to determine the question of petitioner's sanity at the time of the commission of the offense. The petitioner is being confined in violation of his constitutinal rights. The petition is sustained and the writ is granted."

The foregoing two cases clearly hold that insofar as the legislation in question authorizes the Federal government to confine innocent persons solely because of their insanity, it is an encroachment upon the reserve powers of the states to deal with insane persons.

We recognize that the majority opinion by the United States Court of Appeals for the Eighth Circuit below as well as the opinions by Judge Ridge of the United States District Court for the Western District of Missouri in *Higgins* v. *McGrath*, 98 F. Supp. 670; *Kitchens* v. *Steele*, 112 F. Supp. 383, and *Craig* v. *Steele*, 123 F. Supp. 153, are in conflict with our position and in conflict with the previous opinions which we have cited in this brief. The position taken by the United States Court of Appeals for the Eighth Circuit and by Judge Ridge appears to be that since the Federal government has the power to enact a criminal code

and to legislate regarding Federal crimes that the legislation in question is a necessary and proper exercise of the foregoing general power. We respectfully submit that this conclusion is not warranted. The Court below stated categorically that we think that "the validity of the legislation in suit does not in any way depend upon the probable duration of the mental incompetency of Federal prisoners, who, in conformity with Section 4244 are found to be mentally incompetent". (R. 88.) Certainly if an accused who is presumed to be innocent is so mentally incompetent that it is unlikely that he will be able to stand trial on the charges against him there is no necessity in keeping him so that he might be tried on the charge against him because the evidence shows that it is unlikely that he will ever be so tried. We must necessarily conclude that if such a person is being detained and restrained indefinitely by Federal authorities, he is being restrained because of his mental condition and not because he has been charged with the violation of a federal law. Such detention is certainly not a reasonable exercise of the power of the Federal government over those accused of violating the laws of the United States.

We respectfully submit that petitioner is being in effect detained by the Federal authorities solely because he is incompetent. It is fundamental that the government of the United States is a government of limited and restrained powers while the governments of the several states are general and residuary as to the powers which are exercised by them. Every grant of power to the Federal government is limited to those expressly mentioned in the United States Constitution or to those arising therefrom by necessary implication. It has been established for many years that when the Constitution gives a general power it also gives by implication that power and that power alone necessary for the exercise of the general power; but the implication must be necessary and not conjectural and when the means

for the exercise of the granted power are given, no other or different means can be implied as being more effectual or convenient.

There is no conceivable necessity for the confinement of petitioner as being in furtherance of other authorized acts about to be or which will be taken. One can search the entire United States Constitution and we do not find the words "insane" or "incompetent". The Federal government can punish for certain crimes and it is understood that if a prisoner becomes mentally ill after being *convicted* of a crime, and while serving his sentence, he should be treated and cared for. But in the present case your petitioner, Earl P. Greenwood, a citizen, not an offender in the eyes of the law, but one who has been so unfortunate as to lose his mental capacity is being held indefinitely by the United States merely because he is unable to stand trial on the charges pending against him. No jurisdiction in this matter can be conferred upon the Federal government under any statute or Act of Congress.

Petitioner's present commitment is in violation of Amendment X and Amendment V of the United States Constitution. Amendment X to the Constitution of the United States provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people". Amendment V of the United States Constitution provides that no person shall "be deprived of life, liberty or property without due process of law". Why is petitioner being deprived of his liberty? Is it because he has been indicted? Is it because he is insane? Is it because it is contended that "if released, accused probably will endanger the safety of the officers, the property or other interests of the United States"? Is not the last provision a vague, general and tenuous one upon which to base the permanent confinement of a man who has not been proved

to be guilty of any crime and whose only offense is that he has become "mentally ill"?

Counsel for the United States has made two arguments below which should be mentioned at this point. First they have contended that the cases cited by us in support of our petition arise under Section 4246 wherein the defendant has been committed "until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law" while the commitment in the instant action was under Section 4248, Title 18, U.S.C. to-ram "until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property or other interests of the United States or until suitable arrangements have been made for the custody and care of the prisoner by the state of his residence whichever event shall first occur" said sentence under 4248 being made after findings under Section 4247 "that the prisoner is insane or mentally incompetent and that if released he will probably endanger the safety of the officers, the property or other interests of the United States and that suitable arrangements for the custody and care of the prisoner are not otherwise available". First we submit that the Sections in question must stand or fall together as they are absolutely inter-related and the procedure must commence with Section 4244 followed by Sections 4246, 4247 and 4248 before the commitment of any persons such as petitioner is purportedly complete. The attorneys for the United States have further contended below that because the petitioner's confinement is conditioned on any one of three possible events which could conceivably happen that it is not permanent. First we submit that the fact remains that petitioner has been shuffled back and forth from Kansas City to Springfield to Ohio for a period of practically three years

and there is no indication that the situation will change or that his confinement by the Federal government will cease.

Secondly, we submit that petitioner's confinement under the provisions of Sections 4247 and 4248, Title 18, U.S.C., is clearly unconstitutional both as being violative of the Tenth Amendment and of the Fifth Amendment of the Constitution, regardless of the question of the permanency of petitioner's mental incompetency. Under these sections the confinement is solely because of the mental condition of the prisoner and certainly not a proper exercise of the power of the United States over those accused of violating the Federal Criminal laws. Section 4247 deals primarily with the situation where a prisoner whose sentence is about to expire is found to be mentally incompetent and a determination is made that "if released he will probably endanger the safety of the officers, the property or other interests of the United States and that suitable arrangements for the custody and care of the prisoner are not otherwise available". In other words, the prisoner has already been convicted and he has completely served his sentence and been punished and yet this Section authorizes his continued confinement by the Federal authorities partially on a finding that suitable arrangements are not available for the prisoner elsewhere.

Now we are reaching the crux of the problem. What has really happened is that the Federal government has been dissatisfied with the care given by the states to those mentally incompetent who have been released by the Federal authorities. So under the legislation in question the Federal government concludes that it has a mentally incompetent person in custody for whom the states according to the Federal government do not have suitable facilities and the Federal government further decides that "he will probably endanger the safety of the officers, the property or other interests of the United States" so the Federal

government imprisons him indefinitely. Certainly the Federal government is here invading the field of lunacy. They are not detaining this man because he has committed a Federal offense for in this particular situation he has already completely served his sentence. They are detaining him solely because of his mental condition and because of the finding, without a jury, that he might be dangerous or that suitable arrangements are not available elsewhere for him. We submit that the mere fact that the Federal government is dissatisfied with the manner in which the states are handling or treating the insane and concludes that suitable arrangements are not available for a person in the state of his residence, certainly does not give the United States authority to seize this insane person and to confine him.

We submit there is no constitutional justification for the confinement of a prisoner who has served his sentence and who is restrained under the provisions of Sections 4247 and 4248. There is considerably less justification for the confinement of your petitioner under these provisions. Petitioner having never been convicted of the crime with which he is charged and being unable to stand trial must be presumed to be innocent. Now under these sections we have an innocent man who is being restrained by the Federal authorities because he is mentally incompetent, presumably dangerous, and suitable arrangements are purportedly unavailable in the state of his residence. Again we submit that the Federal government cannot take over a field reserved to the states merely because it is dissatisfied with the action or inaction taken by the states with respect to this field. Under this legislation a United States Court determines that "suitable arrangements are not available in the State of Ohio for the detention of this petitioner". Dangers in this kind of statute are obvious.

At this point it is important that we review the record in this case and note that on February 2, 1954, Judge Albert Ridge of the United States District Court made an order in which he found that it was unlikely that the petitioner would probably be able to stand trial on the charges pending against him and in which he suggested that the petitioner might be transferred to the proper authorities of the state of his residence (R. 12, 13). It was pursuant to this suggestion that petitioner was transferred to the authorities in the State of Ohio and taken into custody by the authorities in the State of Ohio (R. 20). Apparently the matter came up before the Probate Court in Cleveland, Ohio, and it was determined by the authorities in Ohio that it was safe for petitioner to be released and he was released by the authorities in the State of Ohio in May of 1954 (R. 20, 72). As soon as he was released by the State of Ohio he was immediately seized under a warrant issued by the United States Attorney and returned to the Western District of Missouri where further proceedings were had and he was finally committed under the order of July 30, 1954. So we have this situation which occurred: the United States released a man to Ohio, Ohio determined that it was safe for him to be released and as soon as he was so released he was immediately seized by the United States and ultimately returned to the Federal prison at Springfield, Missouri, as an incompetent who might endanger the officers, the property or other interests of the United States and on a finding that suitable arrangements for the custody and care of the prisoner are not otherwise available. In other words, the United States has apparently concluded that it does not believe that Greenwood should be at large and therefore regardless of the fact that the State of Ohio has jurisdiction over him as a mentally incompetent person, nevertheless the United States will seize him and restrain him if

they are dissatisfied with the action taken by the state of the man's residence.

Thus when we see the statutes in operation we observe more clearly that it is not a necessary and proper exercise of the power of the United States over Federal crimes. Judge Van Oosterhout who wrote the dissenting opinion in this case below has carefully analyzed this problem and the statutes in question and come in our opinion to a correct conclusion. He was of the opinion that one charged with a Federal offense who is mentally incompetent to stand trial might be held in custody for a reasonable time but the Judge further stated, "However, when it appears with reasonable certainty that the defendant is permanently insane and that he will never be mentally competent to stand trial, constitutional power on the part of the Government is lacking to incarcerate the defendant for an indefinite period, likely the remainder of his life" (R. 89). Judge Oosterhout then discussed the provisions of Sections 4247 and 4248 and came to the conclusion that these sections were clearly "bottomed upon insanity rather than criminality". He recognized that if the defendant was being held only to await trial there was no necessity for the provisions as set forth in Section 4247.

We believe that it is of extreme importance to note that the provisions of Sections 4247 and 4248 and your petitioner's commitment thereunder are in no way related to the pendency of the charge against the petitioner. If the charges against your petitioner are dismissed by the United States, nevertheless he will continue to be held under the provisions of his commitment. Can there be any clearer showing that petitioner is not being held for the purpose of awaiting trial on the charges against him? Let us assume that it is subsequently determined by the United States that the crime in question was never committed or that petitioner is innocent of the charges and the United States

accordingly dismisses the charges against petitioner. Nevertheless his commitment under Section 4248 would continue. Clearly this is not a necessary and proper exercise of the power of the United States over Federal crimes. We submit that regardless of the question of the pertinency of petitioner's mental incompetency that Sections 4247 and 4248 as applied to the petitioner in this case are unconstitutional and violate both the Tenth Amendment and the Fifth Amendment to the United States Constitution.

III

THERE WAS NO SUFFICIENT EVIDENCE TO SUPPORT THE THE FINDING OF THE COURT IN ITS ORDER OF JULY 30, 1954 THAT PETITIONER IF RELEASED "PROBABLY WILL ENDANGER THE SAFETY OF OFFICERS, THE PROPERTY, OR OTHER INTERESTS OF THE UNITED STATES" AND ACCORDINGLY SAID ORDER MUST BE SET ASIDE AND PETITIONER RELEASED.

Petitioner without in any way waiving the foregoing contends that there was insufficient evidence to support the aforesaid finding under Section 4247 which must have been made to support a commitment under Section 4248. Dr. Robinson who examined petitioner on June 28, 1954, testified at the hearing before Judge Ridge on July 15, 1954, that he didn't know whether or not the petitioner would become dangerous or not, "whether he will become a danger to society or not". He testified that he will probably do some more stealing (R. 38). Dr. Smith, Chief of the Psychiatric Service at the Medical Center for Federal Prisoners at Springfield, Missouri, referred to the report of the Board of Examiners at that institution made on February 4, 1954 as follows:

"Question: But you did not find that he had any fixed delusions concerning wanting to harm any one

son or group of persons, officials of the government or otherwise?

"Answer: No, Counselor, we did not and we pointed that out because had we found evidence of such delusions if he had held fixed ideas that government people wanted to hurt him or if he held ideas that he wanted to hurt the government either one might have been construed as making him potentially dangerous.

"Question: Did you ever notice any tendency the man had toward violence toward any person?

"The Court: I don't think the Doctor finished his statement. Had you finished it, Doctor?

"Answer: That is, if he held ideas that he wanted to harm the government or its instrumentalities or perhaps even if we had been able to develop ideas that the government wanted to harm him, we might have felt that there was indication of potential dangerousness but we found neither" (R. 46).

Dr. Smith later testified that he thinks that this man *might* continue to engage in some kind of criminal activities.

It is submitted that the evidence presented is not sufficient to support the finding of the Court in the order of July 30, 1954 that the accused if released "probably will endanger the safety of officers, the property, or other interests of the United States". It is further submitted that assuming sufficient evidence had been introduced to support such a finding the United States has no authority under the Constitution to commit a man upon the finding of a Judge that the accused might probably endanger persons or property. If a man's mental condition is such that he is dangerous, certainly it is within the province of the states under their powers over lunatics and the insane to take care of the man and incarcerate him if necessary. If the United States government can commit a man merely because it has been

determined by the Court that the accused "probably will endanger the safety of officers, the property, or other interests of the United States" then I suppose such a finding could be made as to any person who is mentally incompetent and *might* be potentially dangerous; no one is free from being subject to seizure and the Federal government is given free reign in the field of insanity. This is just an additional encroachment into the rights of the states and of the individuals.

In connection with the finding of the Court as to the possible dangerous condition of petitioner it is important to note the statement made by Dr. Charles E. Smith, Chief of the Psychiatric Service at the Medical Center for Federal Prisoners when he testified at the hearing before Judge Ridge on July 15, 1954 as to the mental condition of your petitioner. This statement is as follows:

> "One of the factors which complicates this whole thing is that as you probably know the hospitals every day are releasing men of this type, that is; they are turning them out on the streets, presumably, at least, with responsible relatives, that sort of thing. So that there are certainly many schizophrenics on the streets, whose illness is of the same severity as the defendant's here, perhaps, so that there is a great pressure on their part apparently to turn those men loose to make room for men that they conceive as worse." (R. 56, 57).

This statement further indicates the apparent dissatisfaction of the Federal authorities in some cases with the care given by the states to the mentally incompetent but this dissatisfaction is no basis whatsoever for allowing the United States to seize and restrain an incompetent person who has been released by the state authorities.

Conclusion

We therefore conclude and show that the petitioner is being restrained by the Federal authorities in violation of his Constitutional rights; that Sections 4244, 4246, 4247 and 4248 of Title 18, U. S. C., properly construed, do not authorize the continued commitment of your petitioner; that if the foregoing sections do authorize the commitment of your petitioner, they are unconstitutional and violate the Tenth Amendment and the Fifth Amendment to the United States Constitution; that Congress does not have the power, either expressed or implied, to imprison for insanity in this instance; that the Acts and Sections in question infringe upon the rights reserved to the states; that petitioner is being deprived of his liberty without due process of law; that petitioner is probably serving a life sentence although he has committed no crime and his only offense is that he is mentally ill; that there was not sufficient evidence upon which to commit petitioner on the ground that he might endanger the persons or the property of the United States and further that the United States has no authority to commit a person upon a finding "that suitable arrangements for the custody and care of the prisoner are not otherwise available"; that the United States cannot invade the field of lunacy merely because the Federal authorities are of the opinion that suitable arrangements are not available in the various states for the insane; and for each and all of the foregoing reasons the petitioner submits that he should be released from Federal restraint.

Respectfully submitted,

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Attorney for Petitioner.

APPENDIX

1. The pertinent provisions of the United States Constitution involved herein are as follows:

Amendment V to the Constitution of the United States:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *"

Amendment X to the Constitution of the United States:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

2. The pertinent provisions of the United States Code are as follows:

> Sec. 4244. Mental Incompetency After Arrest and Before Trial.
>
> Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court

may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

Sec. 4245. Mental Incompetency Undisclosed at Trial.

Whenever the Director of the Bureau of Prisons shall certify that a person convicted of an offense against the United States has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that there is probable cause to believe that such person was mentally incompetent at the time of his trial, provided the issue of mental competency was not raised and determined before or during said trial, the Attorney General shall transmit the report of the board of examiners and the

certificate of the Director of the Bureau of Prisons to the clerk of the district court wherein the conviction was had. Whereupon the court shall hold a hearing to determine the mental competency of the accused in accordance with the provisions of section 4244 above, and with all the powers therein granted. In such hearing the certificate of the Director of the Bureau of Prisons shall be prima facie evidence of the facts and conclusions certified therein. If the court shall find that the accused was mentally incompetent at the time of his trial, the court shall vacate the judgment of conviction and grant a new trial. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

Sec. 4246. Procedure upon Finding of Mental Incompetency.

Whenever the trial court shall determine in accordance with Sections 4244 and 4245 of this title that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. And if the court after hearing as provided in the preceding sections 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

Sec. 4247. Alternate Procedure on Expiration of Sentence.

Whenever the Director of the Bureau of Prisons shall certify that a prisoner whose sentence is about to expire has been examined by the board of examiners

referred to in title 18, United States Code, section 4241, and that in the judgment of the Director and the board of examiners the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available, the Attorney General shall transmit the certificate to the clerk of the court for the district in which the prisoner is confined. Whereupon the court shall cause the prisoner to be examined by a qualified psychiatrist designated by the court and one selected by the prisoner, and shall, after notice, hold a hearing to determine whether the conditions specified above exist. At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissible in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for further questioning by the court and cross-examination by the prisoner or on behalf of the Government. At such hearing the court may in its discretion call any other witnesses for the prisoner. If upon such hearing the court shall determine that the conditions specified above exist, the court may commit the prisoner to the custody of the Attorney General, or his authorized representative. Added Sept. 7, 1949, c. 535, Sec. 4, 63 Stat. 686.

Sec. 4248. Termination of Custody by Release or Transfer.

Whenever a person shall be committed pursuant to section 4247 of this title, his commitment shall run,

until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that, if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur. Whereupon the Attorney General or his authorized representative shall file with the court which made said commitment a certificate stating the termination of the commitment and the ground therefor: Provided, however, That nothing herein contained shall preclude a prisoner committed under the authority of section 4247 hereof from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus. The Attorney General or his authorized representative shall have authority at any time to transfer a prisoner committed to his custody under the authority of section 4246 or section 4247 hereof to the proper authorities of the State of his residence. Added Sept. 7, 1949, c. 535, Sec. 1, 63 Stat. 686.

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No. ~~525~~ Misc.

In the Supreme Court of the United States

OCTOBER TERM, 1954

EARL P. GREENWOOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

The opinions of the court of appeals (Pet. 15) are reported at 219 F. 2d 376. The order and opinion of the district court (R. 36–41) are reported at 125 F. Supp. 777 (W. D. Mo.).

JURISDICTION

The judgment of the court of appeals was entered on February 14, 1955. The petition for a writ of certiorari was filed on March 11, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the district court's finding that petitioner, if released, probably would endanger the safety of officers, property, or other interests of the United States was based on sufficient evidence.

2. Whether the district court committed error in interpreting the provisions of 18 U. S. C. 4246, 4247 and 4248 to authorize the commitment of petitioner who was lawfully in federal custody, charged by indictment with the commission of two felonies, and who was found mentally incompetent to stand trial, when it appeared that such condition might continue indefinitely.

3. Whether the provisions of 18 U. S. C. 4244, 4246, 4247, 4248, which authorize the commitment to the custody of the Attorney General of persons who are incompetent to be tried and dangerous if released, and for whom state care is not available, until any one of these conditions has ceased to exist, violate the Tenth Amendment.

4. Whether the district court's order, pursuant to 18 U. S. C. 4246, 4247 and 4248, committing petitioner to the custody of the Attorney General deprived petitioner of due process of law.

STATEMENT

Petitioner is at present in the custody of the Attorney General at the United States Medical

Center for Federal Prisoners at Springfield, Missouri, following a commitment order entered by the district court on July 30, 1954 (R. 36–38) which was affirmed by judgment of the court of appeals on February 14, 1955 (Pet. 15). The events leading up to and including petitioner's commitment are as follows:

On November 20, 1952, the federal grand jury for the Western District of Missouri returned an indictment charging petitioner in two counts with violations of 18 U. S. C. 2114 by armed robbery of a post office and felonious assault upon a postal clerk, committed on October 22, 1952 (R. 1–3). Pursuant to Rule 20 of the Federal Rules of Criminal Procedure, petitioner consented to transfer of the case to the Northern District of Ohio, where he resided (R. 4). On February 2, 1953, a hearing was held in the district court for that district (R. 5). A psychiatrist who had examined petitioner testified that petitioner was suffering from schizophrenia; would not be fully capable of cooperating with his attorney in his defense, and probably did not understand the full import of his consent to a Rule 20 proceeding (R. 11–13). Thereupon the court remanded the case for disposition to the Western District of Missouri (R. 14, 15).

The District Court for the Western District of Missouri, on February 17, 1953, ordered petitioner to be delivered to the United States Medical Center for Federal Prisoners at Springfield,

Missouri, for an examination and report as to his mental condition (R. 19–20). On April 8, 1953, and again on January 26, 1954, reports of psychiatric examinations of petitioner were prepared by the staff of the Medical Center (R. 116–119, 120–121). The first report recited that in 1945 petitioner had been arrested for robbery and shortly thereafter for assault; that in 1946 he received a one to twenty year sentence on a forgery charge; that he freely admitted holding up a post office in Kansas City; that he also held up a post office in Cleveland.[1] The report concluded that petitioner was suffering from acute schizophrenia and was legally insane. (R. 116–119).

The second report again diagnosed petitioner's illness as schizophrenia. The staff agreed unanimously that petitioner remained incompetent. It found his condition to be chronic with poor prognosis of recovery. The staff recommended that consideration be given petitioner's transfer to a state hospital in his state of residence inasmuch as it was unlikely that he would regain his sanity in the near future (R. 120–121).

On February 2, 1954, the district court modified its order of February 17, 1953, in the light of these reports. The court ordered petitioner returned to the Medical Center for such treatment

[1] There is no record of petitioner's robbing a post office in Cleveland. Apparently the report assumed that the Rule 20 proceeding involved a separate offense.

as might be necessary to determine whether he was acutely or chronically insane (R. 22). In its order the court pointed out (R. 24):

> It now having been determined that defendant is so mentally defective that he will probably never be able to stand trial on the charge pending against him in this Court, a further hearing must be held which will resolve the power to commit defendant as mentally defective under the conditions specified in Section 4247, Title 18 U. S. C., i. e., whether if defendant is "released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available".

The court requested certification of a finding with respect to the quoted statutory propositions within five days and, if the answer were in the affirmative, that petitioner be asked to select a psychiatrist pursuant to 18 U. S. C. 4247 to examine him for a hearing to be held pursuant to 18 U. S. C. 4246. The court further requested certification of termination of commitment if in the interim the Attorney General should transfer the petitioner to the custody of state authorities (R. 25).

The Board of Examiners at the Medical Center submitted the requested report, dated February 4, 1954. The board concurred unanimously in

the opinion that the petitioner remained psychotic and incompetent, that his illness was chronic and that there appeared little likelihood that he would recover in the near future to the extent that he might be considered competent (R. 122–123). The board specifically considered petitioner's potential dangerousness as specified in 18 U. S. C. 4247. Though it found no fixed delusions indicating a desire to harm anyone it stated (R. 123):

> The Board agreed that this subject might be considered potentially dangerous to the extent that if released he might conceivably persist in criminal activities of the type with which he is presently charged.

The board recommended that petitioner be placed in the care of a state hospital (R. 123).

Petitioner remained at the Medical Center until May 1954, at which time, pursuant to the court order of February 17, 1953, as modified on February 2, 1954, he was turned over to appropriate authorities of the State of Ohio. The record is not clear on the exact nature of subsequent proceedings in Ohio but it appears that petitioner was examined by the same psychiatrist who testified at the hearing which led to his removal to the Western District of Missouri, and that he found petitioner sufficiently improved to consider him no longer insane in the legal sense (R. 99, 127). In any event,

petitioner was released by Ohio authorities, rearrested on the charges pending against him and returned to the Western District of Missouri (R. 39–40).

On June 18, 1954, counsel for petitioner, appointed by the court, filed a motion for the appointment of psychiatrists to examine petitioner with respect to his competency and for a hearing, pursuant to 18 U. S. C. 4244 (R. 26). On June 23, 1954, the district court appointed the two psychiatrists (R. 29–30) and on July 2, 1954, it ordered petitioner returned to Springfield for determination of his sanity and, if insane, for findings whether his condition was temporary or permanent and whether petitioner, if released, would probably endanger the safety of officers, property or other interests of the United States (R. 33–34). The report of the neuropsychiatric staff, dated July 8, 1954, prepared in response to the court's order, stated that petitioner remained legally insane, that the prognosis for his recovery was poor, and that he would probably require indefinite hospitalization. The staff concluded that petitioner was not potentially dangerous "except to the extent that if released he might persist in engaging in criminal activities similar to those with which he is presently charged" (R. 125–126).

On July 15, 1954, the district court conducted a hearing as to petitioner's mental competency

pursuant to 18 U. S. C. 4244 (R. 35). It heard the testimony of the two court appointed psychiatrists who examined petitioner for a little in excess of one hour and found him to be legally sane (R. 53, 65–66). The court also heard the testimony of Dr. Charles E. Smith, chief of the psychiatric service at the Medical Center who participated in several examinations of petitioner. Dr. Smith testified that in his opinion petitioner was still insane, that his chances of recovery were poor and that, if released, petitioner might continue to engage in criminal activities (R. 103–104). In addition to the testimony, the court received in evidence the four reports previously mentioned (R. 113).

On July 30, 1954, the court entered its order. It found (1) that petitioner was insane and mentally incompetent to stand trial; (2) that, if released, petitioner would probably endanger the safety of officers, property or other interests of the United States; (3) that no suitable arrangements for the custody and care of petitioner, other than commitment to the custody of the Attorney General, were presently available. Based on these findings, the court ordered petitioner committed to the custody of the Attorney General until occurrence of any one of the following conditions: (1) petitioner regained sanity or mental competency; (2) his mental condition improved to the extent that, if released, he no longer would endanger the safety of officers,

property, or other interests of the United States; or (3) suitable arrangements were made for petitioner's custody and care by the State of Ohio (R. 36–38). The court attached an opinion in which it summarized the evidence on which its findings and order were based (R. 38–41).

Petitioner appealed on grounds that 18 U. S. C. 4244; 4246, 4247, and 4248 were unconstitutional and that the finding that he, if released, probably would endanger officers, property or other interests of the United States, was based on insufficient evidence. The court of appeals sitting en banc affirmed, Judge Van Oosterhout dissenting (Pet. 45).

ARGUMENT

Petitioner attacks the validity of his commitment on three grounds. He contends that the district court's findings made pursuant to 18 U. S. C. 4247 were based on insufficient evidence; that 18 U. S. C. 4246, 4247, and 4248 are not to be construed so as to authorize his commitment because he appears to be permanently insane and will probably never be tried; and that, if those sections are construed to authorize the federal government to hold an incompetent person charged with a federal offense if it appears that he will never be tried, they violate due process and constitute an encroachment on the powers reserved to the States.

1. The first point—whether there was sufficient evidence to support the district court's finding that, if released, petitioner would probably endanger the safety of officers, property or other interests of the United States—is raised as a question (Pet. 2), but not argued. It is clearly without foundation.

Under the statute, which speaks in the disjunctive, it is sufficient if petitioner's release would endanger the safety of officers, or property or other interests of the United States. All the psychiatric reports (except the opinion of one of the two psychiatrists appointed pursuant to petitioner's motion) agree that petitioner would probably continue in the type of criminal activity charged. His criminal history certainly supports this view. Thus the court had a reasonable basis for finding a probability—and probability is all the statute requires—that petitioner, if released, would again endanger federal property and officers.

2. Petitioner's contention that proper interpretation would make 18 U. S. C. 4246, 4247, and 4248 inapplicable to insanity of indefinite duration requires an analysis of these sections as well as of sections 4244 and 4245. All five sections were enacted as comprehensive legislation on September 7, 1949, by an act "To provide for the care and custody of insane persons charged with or convicted of offenses against the United States,

and for other purposes." C. 535, par. 1, 63 Stat. 686.

Section 4244 provides the machinery for determination of the mental competency of a person charged with a federal offense when, at any time after arrest and prior to imposition of sentence or prior to the expiration of any period of probation, there is reasonable cause to believe that he is mentally incompetent. On motion of the United States Attorney, of the defendant, or *sua sponte*, the court may appoint a psychiatrist to examine the defendant or commit him for examination to a hospital. The section provides for a hearing, upon due notice, if the psychiatric report indicates that the accused is mentally incompetent or insane. Section 4245 is designed to deal with cases where a person has already been convicted of a federal offense and it is discovered at the prison that there is probable cause to believe that the prisoner was mentally incompetent at the time of trial.

Section 4246 authorizes the commitment of persons found mentally incompetent in hearings conducted pursuant to sections 4244 and 4245. On a finding of mental incompetency, without more, the accused is to be committed to the custody of the Attorney General "* * * until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law." If, however, the court finds that the additional "conditions specified" in sec-

tion 4247 exist, the commitment is to be governed by section 4248.

Section 4247 is primarily applicable to convicted federal prisoners whose sentences are about to expire. It provides that upon the certification of the Director of the Bureau of Prisons that in his judgment and that of the board of examiners "the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available," the court in the district of confinement shall hold a hearing upon notice, to determine whether the "conditions specified" exist. If the court determines that the "conditions specified" exist, it is authorized to commit the prisoner to the custody of the Attorney General. Section 4248 provides the term of commitments made pursuant to section 4247. That term runs "until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur."

Section 4246, by incorporating the term of commitment set out in section 4248 if the "conditions

specified" in section 4247 are found to exist, supplies an alternative to a simple commitment until the accused is competent to stand trial or the charges are disposed of according to law. The question is whether this alternative, which was utilized in the instant case, is applicable where the prospects that the accused will regain sanity are dubious and he may therefore never be tried.

Wells v. *Attorney General of the United States*, 201 F. 2d 556 (C. A. 10), where section 4246 was construed to permit only temporary commitment pending trial, is of no help in this determination. In that case the commitment was under the first part of section 4246 (without a finding of the additional "conditions specified" in section 4247), *i. e.*, until the defendant became mentally competent to stand trial or until the charge against him was disposed of according to law. That particular provision was held to be inapplicable to a situation where the insanity might be permanent. The same is true of *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9), in which the commitment was "until such time as said defendant shall become mentally competent or until the further order of the court." 205 F. 2d at 652. None of the district court decisions cited by petitioner (Pet. 11) involved the use of the alternative commitment term provided in section 4248. In fact, the instant case is the only one of which we know where an order for commitment found the "conditions specified" in section 4247 to exist and set

the term of commitment in accordance with section 4248.

The alternative commitment provided by the statute, and used in this case, is of an entirely different type from that used in the *Wells* case. Its term is completely independent of the continued pendency of the charge. It is occasioned by the finding that the accused, in addition to being mentally incompetent, would if released probably endanger the officers, property or other interests of the United States and that commitment to the custody of the Attorney General is the only alternative to turning the accused loose, thereby endangering society, because no other facilities for his custody and care are available.

The term of commitment is to end when any one of three alternatives occur, each of which would eliminate the reason for the commitment. If the accused regains his mental competence he must be released, as he should be. If at that time the charges are still pending, he would then have to stand trial. If they are no longer pending he would be of course entirely free. Commitment must also end under this provision if the accused, though still incompetent, would no longer be dangerous if released. Lastly, if suitable arrangements are made for the custody and care of the accused by the state of his residence, the reason for his federal commitment also ceases, and so does the term of the commitment.

The independence of this term of commitment from the continued pendency of the charge, and the nature of the provisions made for the termination of the commitment, both indicate that it was intended to be for an indefinite period of time and not until petitioner could be tried. This intent is emphasized by the fact that the required findings and conditions are set out in sections 4247 and 4248 which are primarily applicable to convicted prisoners whose sentences are about to expire and against whom of course no charges are pending. It is a special provision for dealing with the problem of insanity in relation to dangerous persons who happen to be in federal custody and who must be cared for somehow since no state will undertake to care for them.

3. Petitioner contends that sections 4244, 4246, 4247, and 4248, if construed to authorize the federal commitment of legally incompetent persons who are or may be permanently insane, constitute an unconstitutional encroachment upon the power to legislate in the general field of lunacy, reserved to the states under the Tenth Amendment of the Constitution.

It must be pointed out, first, that the permanency of petitioner's insanity is by no means established. Dr. Smith, who observed petitioner on numerous occasions, testified that it was very difficult to determine whether petitioner's condition was permanent because of the peculiar character-

istics of schizophrenia (R. 103). He explained that schizophrenia is a disease characterized by recovery or "remission" which may continue for long periods of time but may terminate with a relapse. Furthermore, he testified that as early as January 26, 1954, petitioner had improved sufficiently to be moved from the most acutely acute to the least acutely acute ward (R. 86). Dr. Smith's testimony reflects a medical rather than legal approach to petitioner's condition. Though petitioner may never become sane again in medical terms it is by no means impossible or even unlikely that he would regain his mental competency to stand trial.

However, even if petitioner should never regain mental competency, we believe that the court below correctly stated the law when it said:

> We think that (1) the validity of the legislation in suit does not in any way depend upon the probable duration of the mental incompetency of federal prisoners who, in conformity with Section 4244, are found to be mentally incompetent; * * * [Pet. 15 at p. 20].

Regardless of petitioner's prospects of recovery, his commitment (as pointed out above) to the custody of the Attorney General is not permanent. It is temporary because, in addition to recovery, two alternative conditions for release are spelled out in the order of commitment upon occurence of either of which he would have to be

released., *Craig* v. *Steele*, 123 F. Supp. 153, 156 (W. D. Mo.). These conditions for release are expressly required by section 4248. Thus, the statute itself envisions federal custody which will, in all likelihood, be temporary.

The Act "To provide for the care and custody of insane persons charged with or convicted of offenses against the United States, and for other purposes" which became 18 U. S. C. 4244–4248, was the result of a careful study, extending over a number of years, by a committee of the Judicial Conference of Senior Circuit Judges, under the chairmanship of Circuit Judge Calvert Magruder, working in close cooperation with representatives of the Department of Justice. Sen. Rep. No. 209, 81st Cong., 1st sess.; H. Rep. No. 1319, 81st Cong., 1st sess. The legislative history of the act is fully set forth in the opinion of the court below (Pet. 15 at pp. 8–15).

This history indicates that the alternative commitment provided for in section 4246, if the conditions specified in section 4247 are found to exist, was to apply only under very narrowly defined circumstances and was in no way intended to effectuate general legislation in the field of lunacy. Thus, in a report by the committee to the Judicial Conference, dated July 30, 1945, it was pointed out:

> If the accused's mental disability appears not to be a transitory condition, but in all likelihood he will, because of his insanity,

never be brought to trial, it would seem that as a general rule the federal government should not assume responsibility for his hospitalization merely because he has been accused (but not convicted) of a federal crime. Normally such a person should be turned over to the state of his domicile to be confined in a state mental hospital if hospitalization is called for.

But there may be cases where the accused's domicile cannot be satisfactorily established and where no state will assume responsibility for his care. *The federal government may then be faced with the practical situation that it has lawful custody of a person whom it is not safe to let at large.* [Emphasis added.] [Pet. 15 at pp. 10–11 n–1.][2]

It is submitted that the commitment of persons accused of federal offenses and found to be insane under this statute in no way impinges upon the powers reserved to the states under the Tenth Amendment. It is a truism that the Constitution does not give the federal government power to legislate in the field of lunacy *per se*. However, it does not follow that, in the exercise of functions within the legitimate confines of federal

[2] See also the testimony of Judge Magruder, Hearings on S. 858 before a subcommittee of the Senate Judiciary Committee, 80th Cong., 2d sess., p. 7. Sections 14, 15, and 16 referred to by Judge Magruder are the present sections 4246, 4247, and 4248, respectively. The bill did not pass in the 80th Congress, but was reintroduced as S. 936 in the 81st Congress, 1st sess., and enacted into law.

constitutional power, legislation affecting the custody and care of insane persons cannot be enacted.

Numerous statutes are on the books providing for institutional care of insane persons, in whom the federal government has a special interest, such as active and retired military personnel and civilian employees of the Quarter Master Corps,[3] Foreign Service personnel and employees,[4] inmates of the Soldier's Home,[5] and of the National Home for Disabled Volunteers,[6] United States citizens adjudged insane[7] in the Canal Zone,[8] in Canada,[9] and in the Virgin Islands[10] and patients of the Public Health Service.[10]

These statutes presuppose a prior determination of mental incapacity by a court (*Barry* v. *Hall*, 98 F. 2d 222 (C. A. D. C.)), but if a valid determination has been made, the committed person has no absolute right to be returned to his state of residence in the absence of showing that the state will receive and care for him (*Williams* v. *Overholser*, 137 F. 2d 545 (C. A. D. C.)), except where the statute expressly requires transfer to the place of legal residence upon its ascertain-

[3] 24 U. S. C. 191.
[4] 24 U. S. C. 191a.
[5] 24 U. S. C. 194.
[6] 24 U. S. C. 195.
[7] 24 U. S. C. 196.
[8] 24 U. S. C. 196a.
[9] 24 U. S. C. 196b.
[10] 42 U. S. C. 222.

ment. See *DeMarcos v. Overholser*, 122 F. 2d 16 (C. A. D. C.), certiorari denied, 314 U. S. 609.

The federal government's power to exercise jurisdiction over insane persons, incidental to criminal proceedings, is based on Article I, Section 8, Clause 18 of the Constitution which gives Congress the authority "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." This power, which has been given a broad construction since *McCullough* v. *Maryland*, 4 Wheat. 316, 421, is the constitutional basis for the enactment of criminal laws and procedure. *United States* v. *Fox*, 95 U. S. 670. It is not questioned that, under these implied powers, the federal government, even in the absence of statute, can determine the sanity of a person charged with a federal offense and, if found incompetent, can provide for his care pending trial.[11] Clearly, those provisions of sections 4244 and 4246 which effectuate the above

[11] It is fundamental that a mentally incompetent person cannot be tried for or convicted of a criminal offense. *Youtsey* v. *United States*, 97 Fed. 937, 940 (C. A. 6). Under the common law, when a court determined that an accused was incompetent to stand trial, it could commit him to a custodial institution until he recovered sufficiently to be triable, if ever. *Youtsey* v. *United States*, 97 Fed. 937, 941; *supra*. Due process is satisfied if the determination of mental incompetency is made upon notice and opportunity to be heard. *Barry* v. *Hall*, 98 F. 2d 222 (C. A. D. C.).

principles in dealing with persons accused of federal offenses are valid even though they involve determination of mental incompetency and commitment by a federal court. See *Perry* v. *United States*, 195 F. 2d 37, 38 (C. A. D. C.).

But what if it appears that the accused will never recover sufficiently to be triable? Normally, the incompetent should be released to the custody and care of a state mental institution if such care is necessary. But if, as in the case before the Court, no state will assume responsibility for the custody and care of the accused, and it appears that it would be dangerous to leave him at large, some procedure must be devised by law for the protection of the interests of the public and of the individual. *Perry* v. *United States*, 195 F. 2d 37, 38, *supra*. The accused came lawfully into the custody of the federal government because he was charged with a crime—an injury to the federal public interest. Because of his incompetency the issue of criminality may never be determined, but the federal government must have the power to provide some means to protect its interest from further injury and also to deal with a dangerous incompetent lawfully in its hands. The state of residence of the accused could not be compelled to receive and institutionalize him. See *Howard* v. *Overholser*, 430 F. 2d 429, 433 (C. A. D. C.). The interest of the federal government here is no less direct than in the cases of military personnel and other special classes of persons for whom custo-

dial care is provided by the statutes cited above. It is just as necessary and proper for Congress to pass laws for the custody and care of persons who are accused of federal offenses and are found to be incompetent to stand trial where it is found that such persons, if released, would probably endanger the interests of the United States and no state custody is available. Cf. *Kuczynski* v. *United States*, 149 F. 2d 478, 481 (C. A. 7), suggesting, even before enactment of the present statute, that insane persons accused or convicted of crimes are not entitled to unconditional release without provision for their care and restraint if it be found that their insanity continues.

The procedure under which petitioner was committed to the custody of the Attorney General applies only where there is a finding that the accused, if released, would probably endanger the officers, property or interests of the United States and that other facilities for custody and care are not available. Section 4248 not only provides that the term of custody must cease when state care and custody become available but expressly authorizes the Attorney General to make arrangements for state institutionalization in all cases of commitment under sections 4246 and 4247.

There is thus no inroad by the federal government into the general field of lunacy. The government exercises only its own power to determine the sanity of a person accused of a federal criminal offense and to protect federal interests. Fed-

eral custody ceases when the state of domicile of the incompetent accused assumes custody and care so that the federal interest will remain protected.

As we have already pointed out, the holdings in *Wells* v. *Attorney General of the United States*, 201 F. 2d 556, *supra*, and *Higgins* v. *United States*, 205 F. 2d 650, *supra*, are not really in conflict with this view or with the opinion of the court below. Those courts were dealing only with orders under the first part of 4246 providing for the custody of a defendant *pending trial*, as applied to situations where there was no reasonable probability that the defendants would recover sufficiently to stand trial, and were treating the question presented as if such an order under the first part of 4246 were the sole statutory basis for continued indefinite federal jurisdiction. That was the situation which those courts thought would be unconstitutional. As noted above, the orders which were reviewed in those cases were not based on findings pursuant to section 4247 that the defendants, if released, would probably endanger the safety of officers, property, or other interests of the United States. Nor did the orders provide pursuant to section 4248 that the custody should terminate if suitable arrangements were made for state custody and care. The orders thus failed to provide an alternative to federal custody if the defendants should never regain their sanity and therefore never be tried. The Ninth and Tenth Circuits were not called

upon to consider the constitutionality of federal custody in the light of the findings and commitment terms involved in the instant case.

4. As part of his constitutional argument, petitioner contends that sections 4244, 4246, 4247 and 4248 and the order for his commitment issued thereunder punish him without due process of law (Pet. 2). But, as we have stressed, petitioner is being held, not as punishment, but for treatment because he is dangerously insane and no other jurisdiction will care for him. A commitment for insanity is not punishment. *Hill* v. *United States*, 206 F. 2d 204, 205–206 (C. A. 6). Petitioner concedes that he is insane; in fact, the basis of his whole argument is that he will remain insane and therefore never will be able to stand trial on the charges pending against him (Pet. 7).

Due process of law is satisfied where, as here, prior to commitment, the trial court (after notice and opportunity to be heard) has determined that the accused is presently mentally incompetent to stand trial. *Barry* v. *Hall*, 98 F. 2d 222, *supra*. Having been found mentally incompetent and conceding that he is still incompetent, petitioner "may not complain because the government chooses to provide for him in a proper institution of its own rather than to engage in a tug-of-war with the state to see whether it will take custody or control of him." Huxman, J., dissenting in *Wells* v. *Attorney General of the United States*, 201 F. 2d 556, 563, *supra*. If

petitioner should regain his sanity at any time in the future he would be entitled to be released by the very terms of the order of commitment. Furthermore, habeas corpus would be available at any time to test his insanity and to effectuate his release. *Overholser* v. *Boddie*, 184 F. 2d 240 (C. A. D. C.); 18 U. S. C. 4248.

CONCLUSION

Sitting *en banc*, the court below, which as the court in which the Medical Center is located is the one most concerned with the problem, has reached the correct conclusion in a careful and well-reasoned opinion. There is no actual conflict with the decisions in other circuits which did not have before them the limited circumstances presented by the findings and commitment terms in this case. We therefore respectfully suggest that there is no occasion for further review by this Court at this time, but we recognize, of course, that since the problem is general and recurring the Court may wish to settle the issues authoritatively.

Respectfully submitted.

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APRIL 1955.

APPENDIX

Constitutional Provisions and Statutes Involved

United States Constitution, Article I, Section 8, Clause 18 provides:

> The Congress shall have power * * *;
>
> * * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

United States Constitution, Tenth Amendment, provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The pertinent provisions of the United States Code are as follows:

18 U. S. C. 4244:

> Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or prop-

erly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court.

If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

18 U. S. C. 4245:

Whenever the Director of the Bureau of Prisons shall certify that a person convicted of an offense against the United States has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that there is probable cause to believe that such person was mentally incompetent at the time of his trial, provided the issue of mental competency was not raised and determined before or during said trial, the Attorney General shall transmit the report of the board of examiners and the certificate of the Director of the Bureau of Prisons to the clerk of the district court wherein the conviction was had. Whereupon the court shall hold a hearing to determine the mental competency of the accused in accordance with the provisions of section 4244 above, and with all the powers therein granted. In such hearing the certificate of the Director of the Bureau of Prisons shall be prima facie evidence of the facts and conclusions certified therein. If the court shall find that the accused was mentally incompetent at the time of his trial, the court shall vacate the judgment of conviction and grant a new trial.

18 U. S. C. 4246:

Whenever the trial court shall determine in accordance with sections 4244 and 4245 of this title that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law. And if the court after hearing as provided in the preceding sec-

tions 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided.

18 U. S. C. 4247:

Whenever the Director of the Bureau of Prisons shall certify that a prisoner whose sentence is about to expire has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that in the judgment of the Director and the board of examiners the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available, the Attorney General shall transmit the certificate to the clerk of the court for the district in which the prisoner is confined. Whereupon the court shall cause the prisoner to be examined by a qualified psychiatrist designated by the court and one selected by the prisoner, and shall, after notice, hold a hearing to determine whether the conditions specified above exist. At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissible in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for further questioning by the court and cross-examination by the prisoner or on behalf of the Government. At such hearing the court may

in its discretion call any other witnesses for the prisoner. If upon such hearing the court shall determine that the conditions specified above exist, the court may commit the prisoner to the custody of the Attorney General, or his authorized representative.

18 U. S. C. 4248:

Whenever a person shall be committed pursuant to section 4247 of this title, his commitment shall run until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur. Whereupon the Attorney General or his authorized representative shall file with the court which made said commitment a certificate stating the termination of the commitment and the ground therefor: *Provided, however,* That nothing herein contained shall preclude a prisoner committed under the authority of section 4247 hereof from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus. The Attorney General or his authorized representative shall have authority at any time to transfer a prisoner committed to his custody under the authority of section 4246 or section 4247 hereof to the proper authorities of the State of his residence.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

EARL P. GREENWOOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

SIMON E. SOBELOFF,
Solicitor General,

WARREN OLNEY III,
Assistant Attorney General,

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 460

EARL P. GREENWOOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the court of appeals (R. 75–90) are reported at 219 F. 2d 376. The order and opinion of the district court (R. 17–21) are reported at 125 F. Supp. 777 (W. D. Mo.).

JURISDICTION

The judgment of the court of appeals was entered on February 4, 1955 (R. 91). The petition for a writ of certiorari was filed on March 11, 1955, and was granted on October 10, 1955 (R. 91–92). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the provisions of 18 U. S. C. 4244, 4246, 4247, and 4248 authorize the commitment of a person, charged with commission of a federal crime, who, is found to be mentally incompetent with little likelihood of recovery.

2. Whether the provisions of 18 U. S. C. 4244, 4246, 4247, and 4248, which authorize the commitment, under specified conditions, of an incompetent charged with federal crime, without regard to the liklihood of his recovery, are constitutional.

3. Whether the district court's finding that petitioner, if released, would probably endanger the safety of officers, property, or other interests of the United States is sustained by substantial evidence.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pertinent provisions of the United States Constitution and the Act of September 7, 1949, 63 Stat. 686, 18 U. S. C. 4244–4248, are set forth as an Appendix, *infra*, pp. 59–63.

STATEMENT

Petitioner is at present in the custody of the Attorney General at the United States Medical Center for Federal Prisoners at Springfield, Missouri, following a commitment order entered by the district court on July 30, 1954 (R. 17, 18) which was affirmed by the court of appeals on February 14, 1955 (R. 91). The events leading

up to and including petitioner's commitment are as follows:

On November 20, 1952, the federal grand jury for the Western District of Missouri returned an indictment charging petitioner in two counts with violations of 18 U. S. C. 2114 on October 22, 1952, by armed robbery of a post office and felonious assault upon a postal clerk (R. 1–2). Following his arrest in Cleveland, Ohio (see R. 76), and pursuant to Rule 20 of the Federal Rules of Criminal Procedure, petitioner consented to transfer of the case to the Northern District of Ohio (R. 2). On February 2, 1953, a hearing was held in the district court for that district (R. 3). A psychiatrist who had examined petitioner testified that petitioner was suffering from schizophrenia, would not be fully capable of cooperating with his attorney in his defense, and probably did not understand the full import of his consent to a Rule 20 proceeding (R. 4–7). Thereupon the court remanded the case for disposition to the Western District of Missouri (R. 8, 9).

The District Court for the Western District of Missouri, on February 17, 1953, ordered petitioner to be delivered to the United States Medical Center for Federal Prisoners at Springfield, Missouri, for an examination and report as to his mental condition (R. 9–10). On April 8, 1953, a report of a psychiatric examination of petitioner was

prepared by the staff of the Medical Center (R. 59–64). This first report recited that in 1945 petitioner had been arrested for robbery and shortly thereafter for assault; that in 1946 he received a one to twenty year sentence on a forgery charge; that he freely admitted holding up a post office in Kansas City; that he also had held up a post office in Cleveland.[1] The report concluded that petitioner was suffering from acute schizophrenia and was legally insane. (R. 59–64.) On November 16, 1953, the court ordered petitioner returned to the Medical Center for such treatment as might be necessary to determine whether he was acutely or chronically insane (R. 11).

A second report issued by the staff of the Medical Center, dated January 26, 1954 (R. 64), again diagnosed petitioner's illness as schizophrenia. The staff agreed unanimously that petitioner remained incompetent. It found his condition to be chronic with poor prognosis of recovery. The recommendation was that consideration be given petitioner's transfer to a state hospital in his state of residence inasmuch as it was unlikely that he would regain his sanity in the near future. (R. 64–66.)

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[1] As the report indicates (R. 61), the Cleveland robbery occurred subsequent to the Kansas City robbery for which petitioner was indicted. Department of Justice records indicate that, in view of the mandatory sentence of 25 years for armed robbery under the Missouri charge, institution of criminal action based on the Cleveland offense was deferred pending disposition of the Missouri charge.

On February 2, 1954, the district court in the light of this report ordered a hearing under 18 U. S. C. 4246, pointing out (R. 12):

> It now having been determined that defendant is so mentally defective that he will probably never be able to stand trial on the charge pending against him in this Court, a further hearing must be held which will resolve the power to commit defendant as mentally defective under the conditions specified in Section 4247, Title 18, United States Code, i. e., whether if defendant is "released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the (defendant) are not otherwise available."

The court requested certification of a finding with respect to the quoted statutory propositions within five days and, if the answer were in the affirmative, that petitioner be asked to select a psychiatrist pursuant to 18 U. S. C. 4247, to examine him for a hearing to be held pursuant to 18 U. S. C. 4246. The court further requested certification of termination of commitment if in the interim the Attorney General should transfer the petitioner to the custody of state authorities. (R. 13.)

The Board of Examiners at the Medical Center submitted the requested report, dated February 4, 1954. The board concurred unanimously in the opinion that the petitioner remained psychotic

and incompetent, that his illness was chronic and that there appeared little likelihood that he would recover in the near future to the extent that he might be considered competent. (R. 66–69.) The board specifically considered petitioner's potential dangerousness as specified in 18 U. S. C. 4247. Though it found no fixed delusions indicating a desire to harm anyone, it stated (R. 68):

> The Board agreed that this subject might be considered potentially dangerous to the extent that if released he might conceivably persist in criminal activities of the type with which he is presently charged.

The board recommended that petitioner be placed in the care of a state hospital (R. 68).

Petitioner remained at the Medical Center until May 1954, at which time, pursuant to the court order of February 17, 1953, *supra*, pp. 3–4, as modified on February 2, 1954, *supra*, p. 5, the Attorney General delivered him to the custody of authorities of the State of Ohio (see R. 19). The record is not clear on the exact nature of subsequent proceedings in Ohio but it appears that petitioner was examined by the same psychiatrist who testified at the hearing which led to his removal to the Western District of Missouri (*supra*, p. 3) and that he found petitioner sufficiently improved to consider him no longer insane in the legal sense (R. 51, 71–72). In any event, petitioner was released by Ohio authorities, rear-

rested on the charges pending against him and returned to the Western District of Missouri (R. 15, 16).

On June 18, 1954, counsel for petitioner, appointed by the court, filed a motion for the appointment of psychiatrists to examine petitioner with respect to his competency, and for a hearing, pursuant to 18 U. S. C. 4244 (R. 13). On June 23, 1954, the district court appointed two psychiatrists (R. 14–15) and on July 2, 1954, it ordered petitioner returned to Springfield for determination of his sanity and, if insane, for findings whether his condition was temporary or permanent and whether petitioner, if released, would probably endanger the safety of officers, property or other interests of the United States (R. 16–17). The report of the neuropsychiatric staff, dated July 8, 1954, prepared in response to the court's order, stated that petitioner remained legally insane, that the prognosis for his recovery was poor, and that he would probably require indefinite hospitalization. The staff concluded that petitioner was not potentially dangerous "except to the extent that if released he might persist in engaging in criminal activities similar to those with which he is presently charged." (R. 69–71.)

On July 15, 1954, the district court conducted a hearing as to petitioner's mental competency pursuant to 18 U. S. C. 4244 (R. 23). It heard

the testimony of the two court appointed psychiatrists who examined petitioner for a little in excess of one hour and found him to be legally sane (R. 25, 32). The court also heard the testimony of Dr. Charles E. Smith, chief of the psychiatric service at the Medical Center who participated in several examinations of petitioner. Dr. Smith testified that in his opinion petitioner was still insane, that his chances of recovery were poor and that, if released, petitioner might continue to engage in criminal activities. (R. 47–48.) In addition to the testimony, the court received in evidence the four reports previously mentioned (R. 58).

On July 30, 1954, the court entered its order. It found (1) that petitioner was insane and mentally incompetent to stand trial; (2) that, if released, petitioner would probably endanger the safety of officers, property or other interests of the United States; (3) that no suitable arrangement for the custody and care of petitioner, other than commitment to the custody of the Attorney General, were presently available. Based on these findings, the court ordered petitioner committed to the custody of the Attorney General until occurrence of any one of the following conditions: (1) petitioner regained sanity or mental competency; (2) his mental condition improved to the extent that, if released, he no longer would endanger the safety of officers, property, or other

interests of the United States; or (3) suitable arrangements were made for petitioner's custody and care by the State of Ohio. (R. 17–18.) The court attached an opinion in which it summarized the evidence on which its findings and order were based (R. 19–21).

Petitioner appealed on the grounds that 18 U. S. C. 4244, 4246, 4247, and 4248 were unconstitutional and that the finding that he, if released, probably would endanger officers, property or other interests of the United States, was not based on sufficient evidence. The court of appeals sitting en banc affirmed, Judge Van Oosterhout dissenting. (R. 75–90).

SUMMARY OF ARGUMENT

Petitioner came lawfully into the custody of the Attorney General under a charge of having committed a federal offense, and is being held pursuant to federal judicial findings that he is incompetent; that, if released, he would endanger officers, property or other interests of the United States; and that no suitable arrangements are presently available for his custody and care by the state of his residence. He is being held until (1) he regains his sanity or (2) he recovers so that, if released, he will no longer be a danger to federal interests, or (3) suitable arrangements can be made for his custody and care by his state of residence. Petitioner attacks his commitment on the ground that the statute was not intended

to authorize the commitment of persons more than temporarily insane, and that if so interpreted it constitutes an unconstitutional encroachment upon the reserved powers of the states. He further attacks the trial court's finding that if released he will probably endanger federal interests.

I

Sections 4244 to 4248 of the Criminal Code evolved from a prolonged study made by a Committee of the Judicial Conference and provide comprehensively for the care and custody of insane persons charged with or convicted of offenses against the United States.

The statute provides for two types of commitments of persons accused of crime. On a finding of mental incompetence, without more, the accused may be committed to the custody of the Attorney General "* * * until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law." This provision has been held to authorize the commitment only of persons found to be temporarily insane, that is, whose trial can be foreseen. *Wells* v. *Attorney General of the United States*, 201 F. 2d 556 (C. A. 10); *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9).

The statute further provides that if it is found that (1) the accused, if released, will probably endanger the safety of officers or property of the United States, and (2) that suitable arrange-

ments for his custody and care are not otherwise available, then he shall be committed until sane, or until so improved that if released he will not endanger United States interests, or until suitable arrangements for his custody and care have been made by the state of his residence, whichever event shall first occur. Petitioner's commitment is of this type.

It will be noted that the term of commitment under commitments of the latter type is independent of the pendency of the charge and by its nature is of indefinite duration. The conclusion that the statute was intended to apply to persons found to be more than temporarily insane becomes inescapable when its background and the legislative history are considered. The statute was explicitly drafted so as to provide authority for commitment of persons lawfully in the custody of the federal government, whom it was not safe to let at large, where no state would assume responsibility for their care and custody.

II

The statute is within the constitutional powers of the federal government and does not constitute an invasion of the powers reserved to the states under the Tenth Amendment.

In searching out the constitutional warrant for the statute, we look beyond the granted powers to those which are necessary and proper to the

functioning of the federal government in the exercise of its specifically delegated powers. It is significant that the question arises in an area marked by complementary efforts of state and nation to meet the exigencies of admitted public needs. As this Court has cautioned: "* * * it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral." *Hoke* v. *United States*, 227 U. S. 308, 322.

A. The power to commit persons charged with a federal offense to await trial stems from the criminal jurisdiction of the federal government. The power to punish, itself being implied, includes all rights incidental to the power and "conducive to its beneficial exercise." *M'Culloch* v. *Maryland*, 4 Wheat. 316, 418.

But where it appears that the accused will never be tried because of his mental condition, it is appropriate to look to sources supplementing the government's criminal powers, for insanity is not a crime. We note, however, that in the present development of our knowledge it can seldom be known with any certainty whether a state of mental incompetence will last so long as to preclude trial. The record shows, for example, that it is not at all clear that petitioner will not recover so as to permit his trial at some future

date. So long as the possibility of trial is not foreclosed, the power to commit finds support in the criminal powers of the government.

Congress has provided for the commitment of an accused found to be more than temporarily insane only under narrowly defined circumstances, *i. e.*, where it is found that the incompetent, if released, will probably endanger federal interests and where suitable arrangements for his custody and care are not otherwise available.

The federal government has long provided institutional care for other insane persons in whom it has a special interest, such as active and retired military personnel, discharged military personnel whose insanity is service-connected, Foreign Service personnel and overseas employees of the Foreign Service, United States citizens adjudged insane in Canada, patients of the Public Health Service, etc. The Court of Appeals for the District of Columbia Circuit has consistently upheld commitments under these statutes and has further held that the incompetent cannot compel his transfer to the state of his residence unless he can show that such state is willing to accept him into its custody. *E. g.*, *Howard* v. *Overholser*, 130 F. 2d 429 (C. A. D. C.); *De Marcos* v. *Overholser*, 122 F. 2d 16 (C. A. D. C.), certiorari denied, 314 U. S. 609. That court has referred to the concern and duty of the government to provide for the care of such persons and the government's duty to confine them, so long as they are found to be

incompetent, for their own safety and for the protection of the public. It would appear that a person lawfully in federal custody on a federal charge is similarly in a special relationship with the federal government, which gives rise to a duty adequately to provide for his care and treatment.

The power to commit persons for whom it is responsible is buttressed here by the power of the federal government to protect its officers and property from criminal acts. This same inherent power underlies the criminal code which, *inter alia*, provides federal punishment for acts affecting the safety of federal officers, damage to federal property, obstructions to the operation of government, etc. The importance of devising a procedure for committing dangerous incompetents in order to protect federal interests was stressed at the hearing on this legislation.

The statute as applied in this case also draws support from the power of the federal government to protect the public welfare against "the spread of * * * harm to the people of other States from the State of origin." Cf. *Brooks* v. *United States*, 267 U. S. 432, 436. While Congress has not sought to frame the statute in question in terms of its power over interstate commerce, as it did the quarantine statute (42 U. S. C. 264), the operative elements which give rise to federal power under the commerce clause are present.

The ease of modern transportation lends force to the suggestion that a dangerous incompetent turned loose in any state might prove a source of harm to people of other states.

B. Numerous analogies illustrating the ambit of federal power in other fields fortify our conclusion that the federal government has the power to commit incompetents under the circumstances shown here, without regard to the probable duration of the insanity.

C. The power asserted by the federal government cannot be said in any practical sense to encroach upon any rights of the states. It arises in an area of emerging recognition by both state and federal governments of their responsibility to provide care for incompetents for whom they are responsible, despite its cost and inconvenience, and not an area of competing assertions of jurisdiction such as have arisen with respect to the taxing power of state and federal governments. The statute avoids conflict, for it is operative only where the federal government finds itself with a dangerous incompetent lawfully in its custody, for whom no state will provide custody and care. The state of residence claimed by the incompetent can not be compelled to receive and institutionalize him. See *Howard* v. *Overholser*, 130 F. 2d 429, 433 (C. A. D. C.). And federal detention must terminate at any time that it is shown that suitable facilities are available for the

care and custody of the incompetent in his home state. It would be a perversion of meaning to describe the operation of the statute as affecting an inroad on state power. The federal government has been authorized to act only in the absence of state action and in the presence of danger; Congress has thus deliberately asserted "the least possible power adequate to the end proposed." See *Anderson* v. *Dunn*, 6 Wheat. 204, 230; *Toth* v. *Quarles*, 350 U. S. 11, 23.

D. The fact that Ohio might release petitioner if he were again transferred to her custody does not detract from the right and duty of the federal government to provide custody and care under the circumstances shown. It is indisputable that the statute was intended to apply not only to cases where the residence of the incompetent could not be determined, but also to cases where the residence was known but the state concerned could not be persuaded to provide custodial care. In this case, petitioner had been transferred to Ohio, which, upon hearing, found him sane and for that reason refused custody. Petitioner, having been adjudged sane, the federal authorities were obliged to return him to Missouri to stand trial on the pending federal charge. As a preliminary to trial, it was incumbent upon the federal court to determine his competence at that time to stand trial. Cf. *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9). Finding him incompetent, the

district court then faced the question whether to return him again to Ohio. In the light of the recent action of Ohio in releasing petitioner, the court was warranted in concluding that "suitable arrangements for the custody and care of the accused" were not there available. Petitioner has made no attack on this finding, which was affirmed by the court of appeals, undoubtedly because he recognizes that at any time that suitable arrangements for his custody and care can be made with the State of Ohio, he has a right under the statute and under the terms of his commitment to be transferred forthwith into her custody.

E. Finally, petitioner contends that his commitment constitutes punishment without due process of law. But petitioner is being held, not as punishment, but for treatment because he is dangerously insane and no other jurisdiction will care for him. A commitment for insanity is not punishment. *Hill* v. *United States*, 206 F. 2d 204, 205–206 (C. A. 6), certiorari denied, 346 U. S. 859. The federal government having the power to commit persons in petitioner's circumstances, due process of law is satisfied by notice and opportunity to defend. *Simon* v. *Craft*, 182 U. S. 427. The statute provides for notice and hearing, and the record shows that the procedure followed by the district court conformed with the provisions of the statute.

The end served by the statute under attack is legitimate, and the means employed are those ac-

cepted by our jurisprudence as prerequisite to denial of liberty on the ground of insanity. The statute constitutes an exertion of federal authority consistent with the spirit and letter of the Constitution.

III

The finding of the trial court, affirmed by the court of appeals, that petitioner, if released, probably will endanger the safety of officers, property and other interests of the United States is sustained by substantial evidence. All the psychiatrists who examined petitioner (except one who did not testify on the point) agreed that petitioner, if released, might continue in the type of criminal activity charged.

ARGUMENT

Petitioner, who came lawfully into the custody of the Attorney General under a charge of having committed a federal offense, *i. e.* armed robbery of a post office and felonious assault upon a postal clerk, is being held at the federal Medical Center pursuant to federal judicial findings that he is incompetent; that if released he would endanger officers, property or other interests of the United States; and that no suitable arrangements are presently available for his custody and care by the state of his residence. He is to be held in custody until one of three conditions occur: (1) he regains his sanity, in which case

he will be tried on the federal charges; (2) his mental condition improves to the extent that, although he is still not sufficiently competent to stand trial, he may be released without danger to the officers, property, or interests of the United States; or (3) suitable arrangements can be made for his custody and care by the state of his residence. (R. 17–18.) Thus petitioner is being held to meet a specific need to protect federal interests in the special situation presented by the circumstances:—petitioner lawfully came into federal custody; he cannot be released without danger to federal interests; and no other jurisdiction will provide custody and care. He is to be held for such period of time, long or short, as the need to protect federal interests persists.

Petitioner was committed under the provisions of 18 U. S. C. 4244, 4246, 4247, and 4248. He does not challenge the fact that he came lawfully into federal custody nor the finding that he is insane. Rather, petitioner insists that the statute is not to be construed to authorize commitment when it appears that the person concerned is more than temporarily insane and that he probably will not be tried for the federal crime which led to his apprehension (Pet. Br. 10–18). Petitioner argues further that, if the statute be construed as authorizing his commitment, it is an unconstitutional encroachment upon the powers re-

served to the states (Pet. Br. 18–29). In addition to the statutory and constitutional contentions, petitioner contests the sufficiency of the evidence to support the finding that, if released, he probably will endanger the safety of officers or property of the United States (Pet. Br. 29–32).

This is the first reported case involving a commitment pursuant to the second sentence of Section 4246. That sentence, read with the provisions of Sections 4247 and 4248, which are incorporated by reference, authorizes the commitment of an insane person charged with a federal offense, although it appears that he may never be tried, when it is found that, if released, he will probably endanger the safety of federal officers, property or other interests, and that suitable arrangements for his custody and care are not otherwise available.[2] Previous decisions have concerned the question whether persons found to be more than temporarily insane may be confined under the first sentence of Section 4246 which provides for commitment "until the accused shall be mentally competent to stand trial or until the pending

[2] As of January 3, 1956, five persons in addition to Greenwood were being held at the United States Medical Center for Federal Prisoners at Springfield, Missouri, under a commitment pursuant to the provisions of the second sentence of Section 4246.

charges against him are disposed of according to law."[3] The Courts of Appeals for the Ninth and Tenth Circuits have interpreted this provision to provide only for the temporary detention of persons accused of federal crime, and, so interpreted, have upheld its constitutionality. In so doing, they did not reach the question of the power of Congress to provide for the commitment of persons charged with federal crime who are found to be more than temporarily insane. *Wells* v. *Attorney General of the United States*, 201 F. 2d

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[3] The records of the United States Medical Center for Federal Prisoners at Springfield indicate that as of January 3, 1956, 167 persons had been committed under the provisions of Section 4246. (This figure includes the six persons mentioned in n. 2, *supra*.) Of these, 43 are still held at the hospital. A study of cases released reveals the following disposition: released to state hospital (35); returned to court as competent to stand trial (71); released by court on writ (12); released following dismissal of charges (3); released on bond by court (1); released for deportation (1); released by death (1). As a result of crowded conditions at St. Elizabeths Hospital in Washington, D. C., most federal prisoners, other than those from the District of Columbia, have been committed, in recent years, to the Medical Center at Springfield. The statistics published in Note, *Federal Hospitalization of Insane Defendants under Section 4246 of the Criminal Code*, 64 Yale L. J. 1070, 1073, n. 16 (1955), include residents of the District of Columbia committed to St. Elizabeths Hospital in Washington, D. C. See p. 37, n. 18, *infra*.

556 (C. A. 10); *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9).[4]

We argue below that Congress, under the narrow conditions incorporated in the second sentence of Section 4246, has authorized the commitment of persons charged with federal crime who are found to be more than temporarily insane, and that the statute falls within the ambit of federal power under the Constitution. Finally, we deal with petitioner's insubstantial challenge to the trial court's finding that petitioner, if released, will probably endanger federal interests.

I

THE DETENTION OF AN INSANE PERSON CHARGED WITH A FEDERAL CRIME IS AUTHORIZED BY STATUE, REGARDLESS OF WHETHER SUCH PERSON IS APT TO RECOVER, WHEN HIS RELEASE WOULD PROBABLY ENDANGER FEDERAL INTERESTS AND NO SUITABLE ARRANGEMENTS FOR HIS CUSTODY AND CARE ARE OTHERWISE AVAILABLE.

Petitioner's contention (Br. 10–18) that proper interpretation would make 18 U. S. C. 4246, 4247, and 4248 inapplicable to persons charged with crime who are more than temporarily insane re-

[4] To the same effect are *Kitchens* v. *Steele*, 112 F. Supp. 383 (W. D. Mo. 1953); *Craig* v. *Steele*, 123 F. Supp. 153 (W. D. Mo. 1954); *Wright* v. *Steele*, 125 F. Supp. 1 (W. D. Mo. 1954); see further *Higgins* v. *McGrath*, 98 F. Supp. 670, 674 (W. D. Mo. 1951). One district judge interpreted this provision to permit permanent confinement, and for that reason held the statute unconstitutional. See *Dixon* v. *Steele*, 104 F. Supp. 904, 908 (W. D. Mo. 1952); *Edwards* v. *Steele*, 112 F. Supp. 382, appeal dismissed, 204 F. 2d 513 (W. D. Mo. 1952).

quires an analysis of these sections as well as of Sections 4244 and 4245.

Sections 4244–4248 were added to Title 18 (Chapter 313) of the United States Code on September 7, 1949, as an Act "To provide for the care and custody of insane persons charged with or convicted of offenses against the United States, and for other purposes." 63 Stat. 686. This legislation evolved from a prolonged study made by a committee of federal judges appointed by the Judicial Conference of the United States in 1942 for the purpose of studying, in cooperation with the Attorney General, the treatment accorded by the federal courts to insane persons charged with crime.

The committee, headed by Senior Circuit Judge Calvert Magruder of the First Circuit,* reported the results of its study to the Judicial Conference in 1945, and put forward a preliminary draft

*Other members of the Committee were Senior Circuit Judges Learned Hand of the Second Circuit and Curtis D. Wilbur of the Ninth Circuit, Circuit Judges Otto Kerner of the Seventh Circuit, and Charles C. Simons (now Chief Judge) of the Sixth Circuit, District Judge Merrill E. Otis of the Eighth Circuit, and Chief Justice Edward C. Eicher of the United States District Court for the District of Columbia. Judge Otis and Chief Justice Eicher were replaced upon death by Chief Justice Bolitha J. Laws of the District Court for the District of Columbia, and Judge Carroll C. Hincks, then District Judge for the District of Connecticut (now a Judge of the United States Court of Appeals for the Second Circuit).

bill.[6] This draft was then circulated among all federal judges. Following revision in the light of comments received and in consultation with the Attorney General and the Director of the Federal Bureau of Prisons, the draft was submitted to the Judicial Conference in 1946 and approved unanimously.[7] A bill incorporating its terms was introduced in the 80th Congress as S. 850,[8] reintroduced in the 81st Congress as S. 936,[9] and enacted into law. As the court below noted (R. 84), the statute was thus drafted with the utmost care and deliberation, and was "designed to solve numerous difficulties which have arisen in the manner of dealing with delinquents suffering from mental disorders." S. Rep. 209, 81st Cong., 1st Sess., p. 1.

Section 4244 provides the machinery for determination of the mental competency of a person charged with a federal offense when, at any time

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[6] Report of Committee to Study Treatment Accorded by Federal Courts to Insane Persons Charged With Crime, Judicial Conference of the United States (1945) (hereinafter cited Judicial Conference Report). The Conference received and approved the report of the committee. See Report of the Judicial Conference, September Session, 1945, pp. 19–20.

[7] See Report of the Judicial Conference, October session, 1946, p. 18; Hearing before a Subcommittee of the Senate Committee on the Judiciary on S. 850, 80th Cong., 2d Sess., pp. 3–4 (hereinafter cited Hearing on S. 850). Judge Magruder knew of no opposition to the bill. *Id.*, p. 12.

[8] See 94 Cong. Rec. 7221, 7707.

[9] S. Rep. 209, 81st Cong., 1st Sess.; H. Rep. 1319, 81st Cong., 1st Sess.

after arrest and prior to imposition of sentence or prior to the expiration of any period of probation, there is reasonable cause to believe that he is mentally incompetent. On motion of the United States Attorney, of the defendant, or *sua sponte*, the court may appoint a psychiatrist to examine the defendant or commit him for examination to a hospital. The section provides for a hearing, upon due notice, if the psychiatric report indicates that the accused is mentally incompetent or insane. Section 4245 is designed to deal with cases where a person has already been convicted of a federal offense and it is discovered at the prison that there is probable cause to believe that the prisoner was mentally incompetent at the time of trial.

Section 4246 authorizes the commitment of persons found mentally incompetent in hearings conducted pursuant to Sections 4244 and 4245. The first sentence of Section 4246 provides that on a finding of mental incompetency, without more, the accused may be committed to the custody of the Attorney General "* * * until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law." The second sentence provides, however, that if the court finds (as it did with respect to the accused in the instant case) that the additional "conditions specified" in Section 4247 exist, the commitment is to be governed by Section 4248.

Section 4247 is primarily applicable to convicted federal prisoners whose sentences are about to expire. It provides that upon the certification of the Director of the Bureau of Prisons that in his judgment and that of the Board of Examiners "the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available," the court in the district of confinement shall hold a hearing, upon notice, to determine whether the "conditions specified" exist. If the court determines that the "conditions specified" exist, it is authorized to commit the prisoner to the custody of the Attorney General.

Section 4248 provides the term for commitments made pursuant to Section 4247 and the second sentence of Section 4246. The term runs "until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur."

It will be noted, from this summary, that Section 4246 provides for two types of commitments.

On a finding of mental incompetence alone, the accused may be committed "until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law." This provision, as noted above, has been held to authorize the commitment only of persons found to be temporarily insane, and not to be applicable to cases where the insanity is found to be of indefinite duration. *Wells* v. *Attorney General of the United States*, 201 F. 2d 556 (C. A. 10); *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9). These courts have considered that the language of this provision, which speaks of commitment until the accused shall be competent to stand trial or until the pending charges against him are disposed of, in its nature presupposes temporary insanity.

Section 4246 goes on to provide that if "the conditions specified" in Section 4247 exist—*i. e.*, (1) that if released the accused will probably endanger the safety of officers or property of the United States, and (2) that suitable arrangements for the custody and care of the accused are not otherwise available—then the commitment shall be governed by Section 4248. The latter section provides for commitment until the sanity of the person is restored, or until his mental condition is so improved that, if released, he will not endanger the safety of the United States interests, or until suitable arrangements have been

made for his custody and care by the state of his residence, whichever event shall first occur. Such a commitment, which is entirely independent of the continued pendency of a charge, is by its nature of indefinite duration.

Petitioner's argument that the statute should not be interpreted to reach cases where the insanity is more than temporary (Br. 10–18) rests wholly on decisions construing the first sentence of Section 4246 (*supra*, pp. 21–22, 27), which presupposes temporary insanity and temporary detention. Since a commitment under this provision is dependent on the pendency of a charge and since, as Judge Magruder explained,[20] the constitutional right of a person to a speedy trial under the Sixth Amendment would ultimately require that the charges be dismissed, the statutory basis for this type of commitment could not persist indefinitely. But petitioner ignores the second sentence of Section 4246 which, within the narrow confines of the conditions specified, provides a statutory basis for commitment, independent of the pendency of a charge. As the background and legislative history demonstrate, it was precisely to meet the need for federal authority to commit federal offenders who were more than temporarily insane that this provision was included in the statute.

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[20] Hearing on S. 850, 80th Cong., 2d Sess., p. 3.

As early as 1857, Congress had provided in general terms for the commitment of any person charged with crime who was found to be insane (11 Stat. 158, 24 U. S. C. 211), but the Attorney General in 1881 ruled that this statute was applicable only to insane of the District of Columbia. 17 Op. Atty. Gen. 211. Congress forthwith, in 1882, amended another statute, providing for the transfer to the federal mental hospital of prisoners who became insane while serving their sentences (18 Stat. 251), to authorize the transfer to the mental hospital of "all persons who, having been charged with offenses against the United States, are in the actual custody of its officers." 22 Stat. 330, 24 U. S. C. 212. While some commitments were made under this provision,[11] it appears that federal authorities commonly resisted assuming custody of incompetent defendants in cases other than those where special dangers to federal interests were involved.[12]

One reason for the reluctance of federal authorities to accept custody of persons more than temporarily insane may have been doubt as to the applicability of the 1882 statute to persons whose

[11] E. g., *United States* v. *Torrez*, unreported (D. Mass.); *United States* v. *Hook*, unreported (S. D. Fla.). Both cases are discussed in Judicial Conference Report, pp. 7-9. See Dession, *The Mentally Ill Offender in Federal Criminal Law and Administration*, 53 Yale L. J. 684, 694-695 (1944).

[12] See Judicial Conference Report, p. 9; Holtzoff, *Looking at the Law*, 7 Fed. Probation No. 2 (1943) p. 44.

trial could not be foreseen. As we have noted, the statute also authorized transfer to a mental hospital of prisoners who became insane while serving their sentences. In 1916, however, the Attorney General ruled that the statute did not authorize detention of prisoners after their terms had expired, on the ground that (30 Op. Atty. Gen. 569, 571):

> Longer detention could only be justified here because of alleged insanity; but detention for insanity must be pursuant to law, which law must provide for notice and proper hearing on that issue. *Simon* v. *Craft*, 182 U. S. 427. The above statute does not pretend to provide for any such hearing. It only authorizes a "transfer": *i. e.*, a change of the *place* of lawful custody. [Emphasis in original.]

This view was reiterated in 1927, 35 Op. Atty. Gen. 366, 369.[18] But see *Kuczynski* v. *United States*, 149 F. 2d 478, 480 (C. A. 7). If the statute (24 U. S. C. 212) was defective in relation to former prisoners after the expiration of their sentences, in that it did not provide a commitment procedure, it was no less defective as applied to persons accused of crime whose trial could not be foreseen.

Upon a review of the problem, the Committee of the Judicial Conference reported (Report, pp. 7–8):

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[18] In 1930 Congress directed the superintendent of the federal mental hospital to deliver insane prisoners to the custody of state authorities at the expiration of their federal sentence. 46 Stat. 272, as amended, 18 U. S. C. 4243.

> If the accused's mental disability appears not to be a transitory condition, but in all likelihood he will, because of his insanity, never be brought to trial, it would seem that as a general rule the federal government should not assume responsibility for his hospitalization merely because he has been accused (but not convicted) of a federal crime. Normally such a person should be turned over to the state of his domicile to be confined in a state mental hospital if hospitalization is called for.
>
> But there may be cases where the accused's domicile cannot be satisfactorily established and where no state will assume responsibility for his care. *The federal government may then be faced with the practical situation that it has lawful custody of a person whom it is not safe to let at large. * * * Obviously in such case there should be authority in the court to cause the confinement of the accused in a mental hospital.* [Emphasis added.]

The draft bill submitted by the Judicial Conference committee spelled out this authority. In describing the need for the bill, Judge Magruder explained that in many cases the government "has, so to speak, the bear by the tail * * * because there is no procedure by which a person who is charged with crime but who is incapable of being tried because of mental condition * * * could be held *indefinitely* even though he may be one who would be a menace to be left at large."

Hearing on S. 850, 80th Cong., 2d Sess., p. 5. [Emphasis added.]

The conclusion is inescapable that the second sentence of Section 4246 was intended by Congress to authorize and does authorize the commitment of persons charged with federal crime who, like petitioner, are more than temporarily insane and whose trial cannot be foreseen.

II

CONGRESS MAY CONSTITUTIONALLY PROVIDE FOR THE CONFINEMENT OF INSANE PERSONS DANGEROUS TO FEDERAL INTERESTS, WITHOUT REGARD TO THE PROBABLE DURATION OF THEIR INSANITY, WHERE NO SUITABLE ARRANGEMENTS FOR THEIR CUSTODY AND CARE ARE OTHERWISE AVAILABLE

The constitutional problem raised by petitioner (Br. 18–29) concerns the line to be drawn between the respective spheres of jurisdiction of the separate states and the United States in our federal system of government. It is significant, we suggest at the outset, that the question arises in an area marked not by competition between the state and federal jurisdictions, but by comity and cooperation in the interest of the total public welfare, which is equally the concern of both. As we show more fully below (pp. 46–47), in comparable situations the powers of the federal government have been given a liberal and a practical construction so that the federal system may work and the exigencies of admitted public needs may

be met through the complementary efforts of state and nation. Petitioner's attack is not unlike that originally made on the Mann Act, which was challenged as an unconstitutional invasion of the powers of the states to control the morality of their citizens and as an infringement of the liberty of travel. *Hoke v. United States*, 227 U. S. 308. In considering these contentions, which it rejected, this Court cautioned (*id.* at 322):

> Our dual form of government has its perplexities. State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral.

Coming to the issue, we find ample constitutional warrant for commitment by the federal government of dangerous incompetents for whom no state will provide custody and care.

A. THE SOURCES OF FEDERAL POWER TO COMMIT INCOMPETENTS

1. *The powers of the federal government which are incident to the exercise of its criminal jurisdiction.*

The power to commit incompetents will not be found among the powers granted to the federal government. It stems rather from the authority contained in Article I, Section 8, clause 18, of the Constitution "to make all Laws which shall be necessary and proper for carrying into execution

the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Much of the practical power of the Federal Government is founded on this "necessary and proper" clause. The approach of Chief Justice Marshall, in explaining the constitutional warrant for the criminal code, is instructive (*M'Culloch* v. *Maryland*, 4 Wheat. 316, 418):

> The good sense of the public has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the power, and conducive to its beneficial exercise.

The warrant for federal commitment of persons to await trial is immediately apparent. The power to punish is a broad power which must include all rights "incidental to the power, and conducive to its beneficial exercise." These include all the rights and duties, substantive and procedural, appropriate to the exercise of criminal jurisdiction. *See United States* v. *Fox*, 95 U. S. 670. Thus it is not questioned that the federal government, even in the absence of statute, is authorized to determine the sanity of a

person charged with a federal offense, and, if found incompetent, to detain him pending recovery and trial. *Youtsey* v. *United States*, 97 Fed. 937, 940 (C. A. 6); *Forthoffer* v. *Swope*, 163 F. 2d 707 (C. A. 9).[11] The power to hold for trial is recognized as incidental to the power to try and punish and persists so long as the possibility of trial is not foreclosed.

We agree with petitioner (Br. 22–29) that the power to commit, where it appears that the accused will never be tried, cannot rest solely on the government's criminal powers. As Judge Magruder explained in presenting the bill to Congress, "insanity is not a crime. You are not being held on the theory that you have been convicted of a crime." Hearing on S. 850, 80th Cong., 2d Sess., p. 9. We note, however, that in the present development of our knowledge it can seldom be known with any certainty whether a state of mental incompetence will last so long as to preclude trial. As the directors of the two federal hospitals for the insane have both recently explained, a determination as to whether insanity is temporary or permanent is "highly impractical" or "at best" only speculation. See Note, *Federal Hospitalization of Insane Defendants*

[11] See Judicial Conference Report, pp. 6–7; Hearing on S. 850, 80th Cong., 2d Sess., pp. 4–5; Pollak, *Insanity as a Bar to Prosecution in Federal Courts*, 7 Fed. Bar J. 55 (1945). This was the procedure at common law. *Case of John Frith*, 22 How. St. Tr. 307; 1 Hale, Pleas of the Crown 35; 4 Blackstone, *Commentaries* 24; see *Youtsey* v. *United States*, 97 Fed. 937, 941 (C. A. 6).

under Section 4246 of the Criminal Code, 64 Yale L. J. 1070, 1075, n. 33 (1955). It is not at all clear, for example, that petitioner will not recover so as to permit his trial (see R. 53–54). The most that can be said is that his "likelihood of recovery is poor" (R. 54). But in any event, as we show below, the fact that it appears that a particular incompetent may never be tried does not frustrate the power of the federal government, otherwise recognized, to commit him.

In dealing with this issue, we need not consider, as petitioner urges (Br. 18–21), whether Congress has power to commit any incompetent accused of federal crime whose trial cannot be foreseen. We agree with the Courts of Appeals for the Ninth and Tenth Circuits[15] that Congress has not, in the statute in question, sought to exercise so broad a power. The provisions authorizing the indefinite commitment of persons accused of crime apply only under narrowly defined circumstances, *i. e.*, where it is found that the incompetent if released will endanger federal interests and where suitable arrangements for his custody and care are not otherwise available.

The power to act in these circumstances finds independent support in the authority of the federal government to deal with persons lawfully under its control and for whom, having assumed

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[15] *Wells* v. *Attorney General of the United States*, 201 F. 2d 556 (C. A. 10); *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9).

jurisdiction, it is responsible. It is also supported by the power of the federal government to protect its officers, property and other interests from harm from any source.[16]

2. *The duty of the federal government to provide care and custody for incompetents lawfully under its control*

Looking first to the authority of the federal government to provide care and custody for persons lawfully under its control, we find numerous statutes providing for institutional care of insane persons, in whom the federal government has a special interest. As early as 1855, Congress established St. Elizabeths Hospital[17] for the care, among others, of the "insane of the army and navy," and of the District of Columbia.[18] By subsequent legislation, Congress has provided for the custody and care of military personnel who have been discharged from military service but whose insanity is service-connected, for civilians employed by the Quartermaster Corps of the

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[16] See Dession, *The Mentally Ill Offender in Federal Criminal Law and Administration*, 53 Yale L. J. 684, 694–695 (1944).

[17] The Government Hospital for the Insane was established pursuant to the Act of March 3, 1855, c. 199, 10 Stat. 682. Its name was subsequently changed to St. Elizabeths Hospital. 39 Stat. 309. The establishment of the United States Medical Center for Federal Prisoners at Springfield, Missouri, was authorized in 1930, 46 Stat. 270, and the Medical Center was opened in 1933.

[18] The federal government, of course, has exclusive jurisdiction over the District of Columbia and other federal territories and exercises the same powers over the residents thereof as are otherwise reserved to the states. U. S. Constitution, Art. I, Sec. 8, cl. 17; Art. IV, Sec. 3, cl. 2.

Army who become insane while in such employment,[18] for Foreign Service personnel and overseas employees of the Foreign Service,[19] for inmates of the Soldiers' Home[20] and of the National Home for Disabled Volunteer Soldiers,[21] United States citizens adjudged insane in the Canal Zone,[22] in Canada,[23] and in the Virgin Islands,[24] and patients of the Public Health Service.[25]

Some of the foregoing statutes authorize federal custody until the subject is cured or removed by the same authority ordering his reception. The provisions authorizing the custody and care of military personnel are in this category. Others, such as those applicable to persons who are adjudged insane in foreign countries, provide for transfer to the place of residence of the person concerned, upon its ascertainment. Under statutes of this type, the Court of Appeals for the District of Columbia Circuit has consistently held that a person found insane and confined at St. Elizabeths Hospital could not compel his transfer to the state of residence unless he could show that such state was willing to receive him into its custody." *Howard* v. *Overholser*, 130 F. 2d 429

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[18] 24 U. S. C. 191.
[19] 24 U. S. C. 191a.
[20] 24 U. S. C. 194.
[21] 24 U. S. C. 195.
[22] 24 U. S. C. 196.
[23] 24 U. S. C. 196a.
[24] 24 U. S. C. 196b.
[25] 42 U. S. C. 222.

(C. A. D. C.); *Williams* v. *Overholser*, 137 F. 2d 545 (C. A. D. C.); *De Marcos* v. *Overholser*, 122 F. 2d 16 (C. A. D. C.), certiorari denied, 314 U. S. 609. The *De Marcos* case, for example, involved an insane citizen received from Canada. He brought habeas corpus to direct his transfer to Tennessee, where he claimed residence. But since it appeared that Tennessee was unwilling to receive him, the result of granting the petition "would be to set at large a person found in the District of Columbia to be of unsound mind and who had previously been convicted of a serious crime" (*id.* at 17). The court denied the petition, stating (*id.* at 17):

> * * * We can think of no justification for such action. This country, having accepted petitioner from the Canadian Government as an insane citizen of the United States and the court having upon a hearing found him to be incapable of taking care of himself, *had the duty to confine him* in one of its own institutions *for his own safety and for the protection of the public* until he could be transferred to one in the state of his residence; and since it does not appear that there is such a place anywhere he must be kept in St. Elizabeths Hospital until cured of his mental disease. * * * [Emphasis added.]

In other cases as well, that court has emphasized that the care and custody of an insane per-

son for whom the federal government has a special responsibility is a "concern and duty of the government," which is not dependent upon residence in the District of Columbia. See *White* v. *Treibly*, 19 F. 2d 712, 713 (C. A. D. C.) (retired naval officer); *Barry* v. *Hall*, 98 F. 2d 222 (C. A. D. C.) (merchant seaman). The provision of care, of course, in the case of incompetents may necessarily include custody. Indeed, so far as we know, the power of the federal government to provide for the custody and care of persons over whom it has assumed responsibility because of some special relationship to the federal government has never been questioned on constitutional grounds.

A person lawfully in federal custody on a federal charge similarly occupies a special relationship to the federal government which gives rise to a duty to provide or arrange for his care and treatment. "Common principles of humanity would seem to dictate that when the federal government has taken one into lawful custody, under the exercise of valid power, charged with the responsibility of exhausting its jurisdiction over the subject matter as well as the person thus brought before it who thereafter is found to be insane, it then becomes its duty to adequately care and provide for such a one * * *." Judge Huxman, dissenting in *Wells* v. *Attorney General of the United States*, 201 F. 2d 556, 561 (C. A. 10).

3. The power of the federal government to protect federal interests from harm

The power of the federal government to commit persons for whom it is responsible is buttressed here by the federal power to protect officers and property of the United States from criminal acts. "Congress, undoubtedly, possesses [the power of self protection], as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption." *Burroughs* v. *United States*, 290 U. S. 534, 545. This is a broad power, and has been relied on by the courts in sustaining commitment of persons with whom the government has a special relationship giving rise to a duty of care. Thus, as in the *DeMarcos* case (quoted *supra*, p. 39), reference is commonly made to the protection of the public as well as of the individual committed. This constitutional warrant for commitment is made a condition of commitment under the second sentence of Section 4246. Commitment is authorized only after a finding that the accused, if released, "will probably endanger the safety of the officers, the property, or other interests of the United States." 18 U. S. C. 4247.

There can be no doubt that Congress has the power under the Constitution to protect federal officers, property, and other interests. This is the constitutional warrant for the entire criminal

code, which provides federal punishment for acts which, *inter alia*, threaten the safety of federal officers (*e. g.*, 18 U. S. C. 111, 1114, 2114), damage federal property (*e. g.*, 18 U. S. C. 1361, *et seq.*), obstruct the operation of government (*e. g.*, 18 U. S. C. 201, *et seq.*), etc. The federal government surely has the same sort of inherent power to protect its officers and its processes from criminal acts of insane persons, subject, of course, to the requirement that the means adopted be reasonable and consistent with the traditions of our law. In short, while danger to the public peace is by no means the entire justification for involuntary detention of incompetents by public authority, it is a contributing reason for detention of incompetents with propensities toward criminality. Indeed the importance of devising a procedure for committing dangerous incompetents in order to protect federal interests, was stressed by Judge Magruder at the hearing on this legislation.[27]

4. The power of the federal government to prevent the spread of harm from one state to another

The statute as applied in this case also draws support from the power of the federal government to protect the public welfare against "the spread of * * * harm to the people of other States from the State of origin". Cf. *Brooks' v. United States*, 267 U. S. 432, 436. This power has usually been found in terms of the power to promote the public welfare by denying the use of interstate

[27] Hearing on S. 850, 80th Cong., 2d Sess., pp. 5, 7–8.

commerce for purposes deemed inimical thereto. *E. g., Reid* v. *Colorado*, 187 U. S. 137; *Hoke* v. *United States*, 227 U. S. 308; cases cited pp. 46–47 *infra*.

An application of the commerce power to accomplish a purpose analogous to that here involved is the statute authorizing the detention of persons infected with a communicable disease who move, may move, or may be a source of infection to persons who may move from one state to another. 42 U. S. C. 264; see H. Rep. 1364, 78th Cong., 2d Sess., pp. 24–25. Surely the quarantine statute does not constitute an unlawful invasion of the powers of the states over the health and welfare of their citizens. Cf: 20 Op. Atty. Gen. 468, 469; 22 Op. Atty. Gen. 106; 27 Op. Atty. Gen. 85, 89. It is true that that statute is drawn with the commerce power in mind; but it seems clear that its validity as an application of that power draws additional warrant from the authority of the government to use its full power to accomplish ends consistent with the promotion of the public welfare. And, in so far as it is based on the commerce power, it may be noted that the operative elements are present in the instant situation. The ease of modern transportation lends force to the suggestion that a dangerous incompetent, turned loose in any state, may prove the source of harm to people of other states.[28]

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[28] *E. g.*, the record in the instant case shows that petitioner, a resident of Ohio, robbed a post office in Missouri, to get money to go to Louisiana (R. 59, 61, 62).

B. ANALOGIES ILLUSTRATING THE AMBIT OF FEDERAL POWER IN OTHER FIELDS SUPPORT THE CONCLUSION THAT THE GOVERNMENT HAS THE POWER TO COMMIT INCOMPETENTS UNDER THE CIRCUMSTANCES SHOWN HERE, WITHOUT REGARD TO THE PROBABLE DURATION OF THEIR INSANITY

In the interests of clarity, we have largely confined the foregoing argument to situations involving determinations of competence and the care of incompetents by the federal government. There are, however, numerous analogies which fortify the conclusion we urge—situations in which the exercise of authority incidental or appurtenant to the constitutional powers of the United States results not merely in supplementing state law (as is essentially the case here) but in displacing or superseding it. A relevant example is provided by the cases upholding the validity of the federal statute which provides for the vesting in the United States of the property of any veteran who dies intestate in a veterans' hospital or facility, leaving no heirs or next of kin. 38 U. S. C. 17–17g; *United States* v. *Gallagher*, 97 F. Supp. 1014 (S. D. Calif.); *In re McGhee's Estate*, 268 N. Y. S. 79 (Surr. Ct.), affirmed without opinions, 264 N. Y. S. 903, 262 N. Y. 686. In the absence of this statute, the property, of course, would be distributed in accordance with state law.[29]

[29] Cf. 38 U. S. C. 454 (unpaid government allowances accrued at time of death of patient in veterans' hospital who dies intestate, which under the laws of the place of his residence would escheat, shall escheat to the United States).

The various provisions of the Soldiers and Sailors Civil Relief Act of 1940, 50 U. S. C. App. 501 *et seq.*, which suspend the normal operation of state laws, have been upheld as within "a 'necessary and proper' supplementary power" to the constitutional power of the national government to declare war and to raise and support armies. *Dameron* v. *Brodhead*, 345 U. S. 322, 325. Cf. *LeMaistre* v. *Leffers*, 333 U. S. 1.

The chartering of national banks finds its constitutional warrant as being reasonably appurtenant to the powers of the federal government to lay and collect taxes, to borrow money, to declare and conduct war, etc. *M'Culloch* v. *Maryland*, 4 Wheat. 316, 407. Recognizing that the chartering of national banks itself was authorized, this Court recently held that the "incidental powers" stemming from this implied power should not be construed so narrowly as to preclude the use by national banks in their commercial business in New York of the words "saving" or "savings", despite the fact that New York gave these words a special statutory meaning. *Franklin National Bank* v. *New York*, 347 U. S. 373. The fact that the words aptly described, in a national sense, the activity carried on by the national bank was deemed sufficient to displace the operation of state law which would have precluded the use of

these words by banks other than state-chartered mutual savings institutions.[30]

There are also numerous examples of federal laws addressed to the health, safety, and morals of the whole people which, although they may be frankly designed to control or suppress acts normally within the jurisdiction of the several states, have been upheld under the commerce or taxing power. These laws, like the commitment statute here under attack, should not be regarded as in conflict with state jurisdiction, for in the normal case they assist and supplement the enforcement of state policy. Thus, the federal power to prohibit the use of interstate commerce for noxious articles and for immoral purposes has frequently been upheld. *E. g., Brooks* v. *United States,* 267 U. S. 432 (stolen vehicles); *Hipolite Egg Co.* v. *United States,* 220 U. S. 45 (adulterated food, Pure Food and Drug Act); *Hoke* v. *United States,* 227 U. S. 308 (prostitutes, Mann Act); *Reid* v. *Colorado,* 187 U. S. 137 (diseased cattle); *Lottery Case,* 188 U. S. 321 (lottery tickets). The policy of the state of destination has been held sufficient to warrant the denial of facilities of interstate commerce for convict-made goods. *Kentucky Whip and Collar Co.* v. *Illinois Central R. R.,* 299 U. S. 334. The power of the

[30] Similarly, the rights and duties of the United States on commercial paper issued by the United States are governed by federal and not by local law. *Clearfield Trust Co.* v. *United States,* 318 U. S. 363.

federal government under the commerce clause permits the establishment of minimum hours and wages for employees manufacturing goods which "may or will be" sold after production, "in interstate commerce in part or in whole." *United States* v. *Darby*, 312 U. S. 100, 112 (Fair Labor Standards Act). And enforcement of a federal stamp tax on narcotics, which assists in the suppression of illicit traffic in drugs, has been upheld as within the taxing power against the charge that it constitutes an unconstitutional invasion of the police powers of the states. *Alston* v. *United States*, 274 U. S. 289. See also *United States* v. *Kahriger*, 345 U. S. 22 (wagering tax). Cf. *United States* v. *Five Gambling Devices*, 346 U. S. 441 (registration of gambling devices).

C. THE POWER ASSERTED CANNOT BE SAID IN ANY PRACTICAL SENSE TO ENCROACH UPON ANY POWER OF THE STATES

We would also emphasize that the constitutional question posed by petitioner arises here in an area which has been marked by cooperation between federal and state governments to the end that no person who needs care and custody shall fail to receive it. The record has been one of an emerging recognition of the responsibility of government to provide such care, despite its cost and inconvenience, and not one of competing assertions of jurisdiction such as have arisen with respect to the taxing power of state and federal governments. Cf. *Williams* v. *United States*, 133 F. Supp. 319, 321–325 (E. D. Va.), affirmed, C. A.

4, decided December 16, 1953. Many states have cooperated in the receipt from federal authorities of insane persons who are residents of the state concerned.[31] Conversely, the federal government has received from the states insane persons for whom it recognizes a special responsibilty, including thousands of persons eligible for federal care committed by the states directly to federal institutions. See Uniform Laws Annotated, Vol. 9A, pp. 361–362 (1951); Uniform Veterans' Guardianship Act, Sec. 18, *id.*, p. 364. In further recognition of the importance of mental health to the public welfare, the federal government in 1946 established the National Institute of Mental Health, which is authorized to conduct research relating to the causes, treatment, and prevention of mental diseases, in cooperation with other public authorities, including those of the states. 42 U. S. C. 232, 241, 242a.

The statute with which we are immediately concerned very carefully avoids competition between jurisdictions, for it provides that federal custody will cease whenever "suitable arrangements have been made for the custody and care of the [accused] by the State of his residence." 18 U. S. C. 4248. Under the scheme of the Act, as we have stated, transfer to the state of the incompetent's residence is always preferred, and the question of transfer, if it is not raised by public authorities,

[31] See Hearing on S. 850, 80th Cong., 2d Sess., p. 5.

can be raised by the incompetent. *E. g.*, *Williams* v. *Overholser*, 137 F. 2d 545 (C. A. D. C.). See 18 U. S. C. 4248. The practical problem arises when the federal government finds itself with a dangerous incompetent, lawfully in its custody, for whom no state will provide custody and care. The state of residence claimed by the incompetent could not be compelled to receive and institutionalize him. See *Howard* v. *Overholser*, 130 F. 2d 429, 433 (C. A. D. C.). It is only when no alternative facilities are available that the provisions for continued federal custody become operative. Surely, it would be a perversion of meaning to describe the operation of this statute as affecting an inroad on state power. To the contrary, the Federal Government has been authorized to act only in the absence of state action and in the presence of danger, and has thus deliberately [32] asserted "the least possible power adequate to

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[32] It is evident that the statute was deliberately drafted so as to assert the least possible power adequate to the end proposed. Section 4246, as submitted to the Judicial Conference in the preliminary draft of the proposed legislation, provided simply for the commitment of persons charged with crime who had been found to be incompetent. Judicial Conference Report, Draft Bill, p. 2. The qualifying clause to the first sentence and the second sentence of Section 4246 were added in the subsequent revision of the measure.

Indeed, it appears that the scope of the statute was explicitly narrowed with the constitutional question in mind. Letter from Judge Magruder to the Yale Law Journal, April 13, 1954, cited in Note, *Federal Hospitalization of Insane Defendants Under Section 4246 of the Criminal Code*, 64 Yale L. J. 1070, 1078, n. 55.

fine end proposed." See *Anderson* v. *Dunn*, 6 Wheat. 204, 230–231; *Toth* v. *Quarles*, 350 U. S. 11, 23.

D. THE FACT THAT OHIO MIGHT RELEASE PETITIONER DOES NOT DETRACT FROM THE RIGHT AND DUTY OF THE FEDERAL GOVERNMENT TO PROVIDE CUSTODY AND CARE UNDER THE CIRCUMSTANCES SHOWN

As a part of his attack on the constitutionality of the statute, petitioner stresses (Br. 27–28) that the statute provides for federal commitment not only of dangerous incompetents whose residence cannot be established, but also of persons for whom the state of residence will not provide custodial care. It is indisputable that the statute was intended to cover such cases. Concern as to the dangers of turning loose upon society dangerous incompetents for whom no state could be persuaded to provide custodial care was one of the factors stressed in urging the importance of this legislation.[32] Federal experience had shown that too many insane persons, turned over to state authorities at the conclusion of their sentences, "had been deprived of hospital and medical care" and let at large contrary to "the best interests of the patients and the welfare of society."[34] The problem with respect to insane persons under indictment for crime was of the same nature.[35]

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[32] Hearing on S. 850, 80th Cong., 2d Sess., pp. 5, 7–8; Judicial Conference Report, p. 11.

[34] Letter of Director of Federal Prisons, annexed to Judicial Conference Report, p. 3.

[35] Hearing on S. 850, 80th Cong., 2d Sess., p. 5.

We review below (pp. 56–58) the evidence supporting the finding of the trial court that petitioner, if released, would probably endanger the interests of the United States. The fact that the Ohio authorities had previously found petitioner sane "in a legal sense" (R. 72), was obviously not binding on the federal court. *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9); *Dyke* v. *Dyke*, 24 U. S. Law Week 2256 (C. A. 6). Cf. *Lutwak* v. *United States*, 344 U. S. 604 (bona fides of marriage); *Watson* v. *Commissioner*, 345 U. S. 544, 551 (nature of property interests). Petitioner, having been adjudged sane by state authorities in Ohio, the federal authorities in that state were obliged to return him to the District of Missouri to stand trial on the pending charge. As a preliminary to trial, it was incumbent upon the federal court in Missouri to determine petitioner's competence, at that time, to stand trial. Cf. *Higgins* v. *United States*, 205 F. 2d 650 (C. A. 9). Finding him incompetent, the court then faced the question whether to return him again to Ohio. In the light of the recent action of Ohio releasing petitioner, the court was warranted in concluding that "suitable arrangements for the custody and care of accused" were not then and there available (R. 18). Petitioner has made no attack on this finding, which was affirmed by the court of appeals (R. 88). Undoubtedly, petitioner recognizes that at any time that suitable arrange-

ments can be made for his custody and care by the State of Ohio, he has a right under the statute and under the terms of his commitment (R. 18) to be transferred forthwith into her custody.

Does the fact that Ohio might release petitioner if he were again returned there detract from the right and duty of the federal government to provide custody and care for him pursuant to the federal determination that he is incompetent and dangerous? We submit that it does not. Nothing in the Constitution requires the federal government, so long as it continues to have its own legitimate interest in petitioner's competency, to accept the state's determination as conclusive. The same sources of federal power support the commitment of petitioner as would support the commitment of a person whose residence could not be ascertained. The fact that petitioner was lawfully in the custody of the federal government to answer a federal charge at the time he was committed gives rise to that special relationship from which springs a duty of care by the federal government, and the fact that he was found dangerous to federal interests gives rise to a power to take lawful preventative measures. Considered together, these considerations provide ample constitutional warrant for petitioner's commitment.[36]

[36] If petitioner were transferred again to Ohio and again released by Ohio, the federal authorities there would be under a duty to re-transfer him to Missouri, and the district court in Missouri would still be under a duty to determine, for itself, whether he was competent to stand trial.

E. THE PROVISIONS FOR COMMITMENT AFFORD DUE PROCESS OF LAW

Petitioner further contends (Br. 23, 25) that his commitment is unconstitutional in that it constitutes punishment without due process of law. But petitioner is being held, not as punishment, but for treatment. He is in custody because he is dangerously insane and no other jurisdiction will care for him. A commitment for insanity is not punishment. *Hill* v. *United States*, 206 F. 2d 204, 205–206 (C. A. 6), certiorari denied, 346 U. S. 859.

Since insanity is not a crime, neither the constitutional guaranty of trial by jury nor any particular mode of judicial proceeding is required as a prerequisite to holding an incompetent for treatment. And since the federal government has jurisdiction to commit persons like petitioner in the circumstances found in his case, due process of law is satisfied by notice and opportunity to be heard. *Simon* v. *Craft*, 182 U. S. 427; *Barry* v. *Hall*, 98 F. 2d 222 (C. A. D. C.).

The provisions of the statute not only meet the essentials of due process but provide numerous additional safeguards. Section 4244 provides that where there is reasonable cause to believe an accused person may be insane, the court shall require examination and report by one or more qualified psychiatrists. If the psychiatric examination indicates that the subject

is incompetent or insane, the court is to hold a full hearing, upon due notice. At such hearing evidence may be submitted.[37] There is also provision for psychiatric examinations and a full evidentiary hearing in court for purposes of determining the existence of the conditions set forth in Section 4247, *i. e.*, dangerousness and lack of other available facilities for custody and care. Section 4248 provides for certification of the termination of a commitment made pursuant to Section 4247 and guarantees to one committed thereunder the right of establishing eligibility for release by habeas corpus. See *Overholser* v. *Boddie*, 184 F. 2d 240 (C. A. D. C.).

As the court below held (R. 79), there can be no question but that the procedure followed by the district court conformed to the provisions of the statute. Petitioner was present in person at the hearing which terminated in his commitment and was represented by astute court-appointed counsel (R. 23). Prior to the hearing he had been examined repeatedly by federal doctors (R. 59–71) and had secured the services of court-appointed psychiatrists (R. 13–15). After full hearing, the court found that the conditions specified by the statute pertain—that petitioner is incompetent, that, if released, he

[37] The accused is granted immunity against admission in evidence, in any subsequent criminal proceeding, of statements made by him or the finding of the judge.

would be dangerous to federal officers, property or other interests, and that no suitable arrangements for his care by the state can be made. Under these circumstances petitioner is in a class for which Congress has, in the proper exercise of its constitutional power, made special provision. Petitioner's continued confinement is therefore proper until he can show that one of the bases for termination of custody has arisen.

F. SUMMARY

The delineation of the ambit of federal power in relation to that of the states reflects a living awareness of the requirements of the public welfare. The precedents do not require that doctrines of federalism founded on the Constitution are to be given application divorced from reality so as to deny to the federal government the power to act to protect federal interests and the people of the several states, when the need for action is manifest and the particular state which might otherwise have jurisdiction cannot or will not act. The precedents demonstrate that this Court through the years has given substance to the classic formulation of Chief Justice Marshall, who in *M'Culloch* v. *Maryland*, 4 Wheat. 316, 421, searched out the limits of federal power in terms of end and means:

> Let the end be legitimate, let it be within the scope of the constitution, and all means

> which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

No one can reasonably suggest that the end served by the statute under attack is other than a legitimate one. So, too, the means employed are those accepted by our jurisprudence as prerequisite to denial of liberty to a citizen on grounds of insanity. Finally, Congress, mindful of the peripheral nature of its exertion of power, has taken pains to assert the least possible power adequate to the end proposed.

We conclude that the statute constitutes an exertion of federal authority consistent with the letter and spirit of the Constitution and that it is constitutional.

III

THE FINDING THAT PETITIONER, IF RELEASED, WILL PROBABLY ENDANGER THE SAFETY OF OFFICERS, PROPERTY, OR OTHER INTERESTS OF THE UNITED STATES IS SUPPORTED BY THE EVIDENCE

Petitioner does not challenge the finding of the court below that he is insane. On the contrary, his argument is based on the proposition that he is incompetent and is unlikely to recover. (See Pet. Br., pp. 23, 32.) Petitioner, however, challenges the finding that, if released, he probably will endanger the safety of officers, property, or other interests of the United States. (Pet. Br., pp. 29–31.)

Little need be said with respect to this contention. Under the statute, which speaks in the disjunctive, it is sufficient if petitioner's release would endanger the safety of officers, or property, or other interests of the United States. The report of the Medical Center, based upon extended observation of petitioner at the Center, and signed by Dr. Smith, Chief of the Psychiatric Service, and two staff psychiatrists attests to his delusional thinking and impaired judgment and concludes that "if released, he might persist in engaging in criminal activities similar to those with which he is presently charged" (R. 71). At the hearing, Dr. Smith testified that there was a distinct possibility that if released petitioner might continue to engage in criminal activity: "* * * * my best judgment would say that he might very well go and do the same thing over again, and to that extent obviously he would be a danger. Anyone that tries to break into a post office is certainly going to be a danger" (R. 53). Dr. Robinson, who was appointed by the court to examine petitioner as required by Section 4244 (R. 31) and thought petitioner sane, although "not very intelligent"[*] (R. 32–33), testified that

[*] Dr. Major, who also examined petitioner, pursuant to order of the court (R. 24), similarly testified that petitioner, in his opinion, was not insane at the time he examined him (R. 25). Cross-examination by petitioner's counsel cast some doubt on the scope of the examination made by these doctors (R. 25–29, 33–37).

if released, petitioner "will probably do some more stealing. * * * He might rob some more post offices. * * * That seemed to be his specialty * * *" (R. 38). This testimony as to the likelihood of continued criminal activity, which was uncontradicted, plainly supports the finding of the trial court that petitioner, if released, "probably will endanger the safety of officers, the property, or other interests of the United States" (R. 18). That finding was explicitly affirmed by the court below as sustained by substantial evidence (R. 76). The question being a factual one, the concurrent findings of the two lower courts should not be disturbed. *Comstock* v. *Group of Investors*, 335 U. S. 211, 214; *Delaney* v. *United States*, 263 U. S. 586, 589–590; *United States* v. *Johnson*, 319 U. S. 503, 518.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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JANUARY 1956.

APPENDIX

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article I, Section 8, Clause 18, provides:

> The Congress shall have power * * *;
>
> * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. . . .

United States Constitution, Tenth Amendment, provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The pertinent provisions of the United States Code are as follows:

18 U. S. C. 4244:

> Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to

assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court.

If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. No statement made by the accused in the course of any examination into his sanity or mental competency provided for by this section, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial shall in no way prejudice the accused in a plea of insanity as a defense to the crime charged; such finding shall not be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

18 U. S. C. 4245:

> Whenever the Director of the Bureau of Prisons shall certify that a person convicted of an offense against the United States has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that there is probable cause to believe that such person was mentally incompetent at the time of his trial, provided the issue of mental competency was not raised and determined before or during said trial, the Attorney General shall transmit the report of the board of examiners and the certificate of the Director of the Bureau of Prisons to the clerk of the district court wherein the conviction was had. Whereupon the court shall hold a hearing to determine the mental competency of the accused in accordance with the provisions of section 4244 above, and with all the powers therein granted. In such hearing the certificate of the Director of the Bureau of Prisons shall be prima facie evidence of the facts and conclusions certified therein. If the court shall find that the accused was mentally incompetent at the time of his trial, the court shall vacate the judgment of conviction and grant a new trial.

18 U. S. C. 4246:

> Whenever the trial court shall determine in accordance with sections 4244 and 4245 of this title that an accused is or was mentally incompetent, the court may commit the accused to the custody of the Attorney General or his authorized representative, until the accused shall be mentally competent to stand trial or until the pending charges against him are disposed of ac-

fording to law. And if the court after hearing as provided in the preceding sections 4244 and 4245 shall determine that the conditions specified in the following section 4247 exist, the commitment shall be governed by section 4248 as herein provided.

18 U. S. C. 4247:

Whenever the Director of the Bureau of Prisons shall certify that a prisoner whose sentence is about to expire has been examined by the board of examiners referred to in title 18, United States Code, section 4241, and that in the judgment of the Director and the board of examiners the prisoner is insane or mentally incompetent, and that if released he will probably endanger the safety of the officers, the property, or other interests of the United States, and that suitable arrangements for the custody and care of the prisoner are not otherwise available, the Attorney General shall transmit the certificate to the clerk of the court for the district in which the prisoner is confined. Whereupon the court shall cause the prisoner to be examined by a qualified psychiatrist designated by the court and one selected by the prisoner, and shall, after notice, hold a hearing to determine whether the conditions specified above exist. At such hearing the designated psychiatrist or psychiatrists shall submit his or their reports, and the report of the board of examiners and other institutional records relating to the prisoner's mental condition shall be admissible in evidence. All of the psychiatrists and members of the board who have examined the prisoner may be called as witnesses, and be available for further questioning by the court and cross-examina-

tion by the prisoner or on behalf of the Government. At such hearing the court may in its discretion call any other witnesses for the prisoner. If upon such hearing the court shall determine that the conditions specified above exist, the court may commit the prisoner to the custody of the Attorney General, or his authorized representative.

18 U. S. C. 4248:

Whenever a person shall be committed pursuant to section 4247 of this title, his commitment shall run until the sanity or mental competency of the person shall be restored or until the mental condition of the person is so improved that if he be released he will not endanger the safety of the officers, the property, or other interests of the United States, or until suitable arrangements have been made for the custody and care of the prisoner by the State of his residence, whichever event shall first occur. Whereupon the Attorney General or his authorized representative shall file with the court which made said commitment a certificate stating the termination of the commitment and the ground therefor: *Provided, however,* That nothing herein contained shall preclude a prisoner committed under the authority of section 4247 hereof from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus. The Attorney General or his authorized representative shall have authority at any time to transfer a prisoner committed to his custody under the authority of section 4246 or section 4247 hereof to the proper authorities of the State of his residence.

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